

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Yahya Afridi, CJ
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Miangul Hassan Aurangzeb

Civil Petition No. 99 of 2025

[Against judgment dated 26.11.2024 of
the Peshawar High Court, Peshawar
passed in Writ Petition No.1565-P/2024]

*Shaheen Airport Services (SAPS), through
General Manager, Peshawar and others.*

... *Petitioners*

Versus

*M/s Yasir Traders, Arms and Ammunition
Dealers & Importers, Peshawar and others.*

... *Respondents*

For the Petitioners: Mr. M. Munir Paracha, ASC.
Syeda B.H Shah, AOR.

For the Respondents: Not represented.

Date of Hearing: 23.10.2025.

JUDGMENT

Muhammad Shafi Siddiqui, J. This petition for leave to appeal arises out of judgment dated 26.11.2024 passed by the Peshawar High Court, Peshawar, whereby writ petition filed by respondents No. 1 and 2 (hereinafter called as '**contesting respondents**') was disposed of with certain directions.

2. The learned counsel for the petitioners through this petition calls for the interpretation of the word '*entertain*' by arguing that in view of the last insertion i.e. section 14A in the Customs Act, 1969 (hereinafter referred to as '**the Act**'), it is the jurisdiction and powers of the terminal operator/port operator to consider as to the payability of demurrage and delay detention charges and not customs department.

3. We have heard the learned counsel on this question and perused the material available on record.

4. The contesting respondents being importers of HUNTING Carbines filed goods declaration for the clearance. The Directorate of Intelligence and Investigation Customs seized the goods *vide* seizure Case No.41/2023 dated 06.10.2023 and assumed jurisdiction before the examination and assessment by the Customs Collectorate.

5. The respondent No.1 approached the Peshawar High Court, Peshawar through Writ Petition No.4700-P of 2023, which was disposed of *vide* order dated 06.12.2023 with the direction that the Intelligence and Investigation officials of Customs to handover the seized goods to the appropriate officer of the Customs Department for further processing of goods declaration by respondent No.1. After the process of goods declaration, the adjudicating authority *vide* its order-in-original dated 07.12.2023 confiscated the consignment to the State. The matter was then taken by the Collector of Customs (Appeals), Islamabad, which appeal was allowed *vide* order dated 30.01.2024 and the order-in-original was set aside and the matter was remanded to the customs officials to process the goods declaration. The consignment was assessed and cleared on 14.02.2024.

6. Similarly, thirteen (13) consignments of Hunting Carbines of respondent No.2 reached airport and thirteen (13) goods declaration were filed for clearance without attachment of any financial instruments on the ground that there is no need of the same. However, the plea of respondent No.2 was not accepted by the Principal Appraisal and the matter was adjudicated; while releasing the consignment the order to attach the financial instruments and imposition of penalty of ten thousand rupees (Rs.10,000/-) was passed. The matter was then challenged by respondent No.2 in appeal before the Collector of Customs, Islamabad, which appeal was allowed *vide* order dated 06.02.2024 and the goods were released unconditionally without any penalty.

7. The respondents applied for issuance of delay and detention certificate in terms of subsection (2) of section 14A of the Act, which was issued in favour of both respondents No.1 and 2.

8. The said delay and detention certificate was refused to be complied by the petitioners and, consequently, the contesting respondents filed Writ Petition, seeking declaration that such denial/refusal by the petitioners is in

violation of section 14A of the Act; consequently, the writ petition was allowed. As against the said judgment, this civil petition for leave to appeal was filed.

9. Section 14A of the Act was substituted by the Finance Act, 2013 (assented on 29.06.2013) and at the time of substitution section 14A stood, as under:

"14-A 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 bills, rent and taxes in respect of such accommodation."

The earlier substituted section 14A was inserted by the Finance Ordinance, 1984 dated 14.06.1984, which was then subjected to amendments upto 2001. This provision is serviced by rule 556 of the Customs Rules, 2001 (hereinafter referred to as the '**the Customs Rule**'). The Customs Rule caters for the rights and obligations of the terminal operator. This was further substituted by another sub-paragraph (iv) in terms of S.R.O 82(I)/2008 dated 23.01.2008, which reads 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."

Sub-paragraph (iv) of the Customs Rule thus compelled the terminal operator, who is under an obligation to honor the delay and detention certificate and grant concession from port handling and demurrage charges. Indeed, if on issuance of delay and detention certificate the importer is not found to be at fault then it does not necessarily mean that the terminal operator was at fault. However, the two claims are independent and not necessarily be taken up together. The question before us is not the claim of the terminal operator rather it is the claim of the importer which was adjudged independently by the authorized person under the law that no delay and detention charges be recovered as delay was not caused by importer. This does not determine that the terminal operator has no case

against the official respondents which may be taken to its logical end, if so desired by terminal operator which has to be adjudged in accordance with law and the agreement authorizing it to operate, however, such unadjudicated claim of Terminal operator cannot be pressed against importer on issuance of delay and detention certificate. It is for the convenience of the importer and further accrual of claim that goods ought to be released on issuance of such certificate.

10. Earlier Section 14A provides complete burden upon the terminal operator/port operator that they shall provide at its or his own cost adequate accommodation to customs staff for offices, examination of goods, detention and storage of goods and shall also pay utility bills and rent etc., however, it was replaced by the current section 14A having subsection (1) and subsection (2). Subsection (1) deals with the current issue which says that any agency or person including but not limited to port authorities managing or owning the custom 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.

11. The petitioners' case revolved around the word 'entertain' in subsection (2) of section 14A of the Act and that, per the learned counsel, it is the petitioner who would decide as to whether the importer was entitled to any relaxation, concession or complete waiver of the detention and demurrage charges.

12. We do not agree with such argument; in the first instance, port operator which is only a licensee under the agreement and thus cannot be a judge of his or its own cause. It is at this point in time when paragraph (iv) of rule 556 of the Customs Rule would come into play. Interestingly, despite the use of the word '*entertain*' the word '*shall honour*' used in the aforesaid sub-paragraph was not changed. This sub-paragraph continued to bind the terminal operator to honour the delay and detention certificate issued by an officer of customs, not below the rank of 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, the importer shall substantiate their case with corroborative documents.

13. This part of the rules has been applied by the importer/consignee, who was able to obtain delay and detention certificate from the competent authority as identified in sub-paragraph (iv) of rule 556 of the Customs Rule. For convenience, the relevant portion of rule 556 of the Customs Rule is reproduced hereunder:

“556. Rights and obligations.- The Terminal Operator Off-dock Terminal shall have the following Rights and Obligations under Customs Computerized System:

(a) Safe Custody of Cargo/Goods and Containers:

- (i) The Terminal Operator Off-dock Terminal is obligated to ensure the safe custody of all goods, cargo and containers received either from a vessel or from the shipper's truck and to ensure that the goods, cargo and containers are not tampered with in any manner whatsoever and that the container seals are not removed or replaced in any manner whatsoever.*
- (ii) The Terminal Operator Off-dock Terminal is obligated to store all goods, cargo and containers received by them within the areas defined by Terminal Operator Off-dock Terminal in rule 554 and approved by the Collector after verification by the technical team; provided, however, that the Terminal Operator Off-dock Terminal may make arrangements to temporarily store containers within a secure area inside a Customs Computerized System terminal or a customs-port at Terminal Operator's own risk, cost and liability and may be required to present such containers to Customs Computerized System staff when called for examinations with intact seals and shall deliver all such containers through the exit points designated under rule 554 and, in relation thereto, the Terminal Operator Off-dock Terminal shall advise the Collector of this additional area before movement of any containers for such storage and the Collector may approve this additional area after verification from the technical team.*
- (iii) The Terminal Operator Off-dock Terminal is obligated to ensure the safety or security of all persons or individuals within the areas under their control and, pursuant thereto, the Terminal Operator Off-dock Terminal may issue such instructions as deemed appropriate restricting or allowing vehicles in areas under their control or require the use of safety gear, helmets, shoes, etc., in certain areas and may temporarily restrict or allow access to areas considered hazardous.*
- (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.*

- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) ..."

14. In the main provision, i.e., subsection (2) of section 14A of the Act the word '*entertain*' cannot be read in isolation as it further bestows an obligation to refund the demurrage charges which, the agency or person has received on account of delay because of no fault of exporter or importer as adjudged by the officer concerned of the customs. If at all the word '*entertain*' means to adjudicate (as argued), subsection (2) would not have provided further so as to the refund of demurrage charge which the port operator/terminal operator has received on account of delay. Once the delay and detention certificate was issued it ought to be entertained and in consequence whereof demurrage charges are to be refunded.

15. Thus, the phrase '*shall entertain*' used in subsection (2) of section 14A of the Act casts a mandatory obligation upon all agencies, including port authorities, terminal operators, and container freight stations, to receive, acknowledge, and act upon a Delay and Detention Certificate issued by a Customs officer not below the rank of Assistant Collector. The legal effect is that, once such certificate is issued confirming that the delay in clearance of goods occurred without fault of the importer or exporter, the concerned private agency is bound to refund or waive demurrage and detention charges for the certified period. Failure to do so constitutes a violation of statutory duty and attracts penal consequences under section 156(1)(7A) of the Act.

16. *All Pakistan News Papers Society* case¹ clarifies that the term '*entertain*' mean 'to receive and to act upon'. This definition clarifies that when a law requires an authority to '*entertain*' a document or application, it is not a mere formality but an obligation to consider and give effect to it. In *the State through Regional Director ANF* case² the Court discussed the test for distinguishing mandatory and directory statutory provisions. It held that where non-compliance with a statutory provision carries a penalty or legal

¹ All Pakistan Newspaper Society v. Federation of Pakistan (PLD 2004 Supreme Court 600).

² The State through Regional Director ANF v. Imam Bakhsh (2018 SCMR 2039).

consequence, the provision is mandatory. In the context of section 14A(2) read with section 156(1)(7A) of the Act, the obligation to entertain a Delay and Detention Certificate is mandatory, not discretionary, since failure to comply invites penal consequences. The legislature was conscious of this interpretation when subsection (2) of section 14A of the Act was substituted via Finance Act, 2013.

17. Applying the said test, section 14A(2) of the Act, signifies that a port authority must not only receive but act upon the Delay and Detention Certificate issued by Customs authorities. Hence, the statutory mandate leaves no discretion with the port authorities to disregard or partially comply with such certificates; the obligation is absolute, enforceable and mandatory in nature.

18. In view of the above and on the proposed question of law this petition is converted into appeal, however, since the question was answered in the negative, the appeal fails and is hereby dismissed.

Chief Justice

Judge

Judge

Islamabad:
23.10.2025

Approved for Reporting
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