

ORDER SHEET
HIGH COURT OF SINDH, KARACHI

Suit No. 826 of 2017

Date	Order with signature of Judge
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For hearing of C.M.A No. 5222 of 2017.

M/s. Ellcot Spinning Mills Ltd.,.....Plaintiff

Versus

Federal Board of Revenue & othersDefendants

Date of hearing 20.04.2017

Ms. Sofia Saeed Shah advocate for the plaintiff.

Mr. Kashif Nazeer advocate for the defendant No. 2 and 3

Mr. Abdul Qadir Leghari, Assistant Attorney General.

Muhammad Ali Mazhar, J: The plaintiff imported consignment of spare parts of Niigata Diesel Engine through L.C. and invoice dated 09.02.2017. The learned counsel for the plaintiff argued that the Revenue Department has raised huge demand for release of consignment i.e. 10% custom duty and 17% sales tax against the natural power gas generation unit. It is further stated by the counsel that the plaintiff has already paid rate of custom duty and sales tax and also claimed concession in terms of 5th Schedule of Custom Act, 1969 and 6th Schedule of Sales Act, 1990. Learned counsel submits that earlier various suits were decided by this court including Suit No.41 of 2015, but the Department has challenged the order in High Court Appeal i.e. HCA Nos.263 to 279 of 2017 and the learned Division Bench of this court suspended the operation of the impugned judgment and decree. Learned counsel for the plaintiff made

much emphasis that goods are lying at port and plaintiff has to face huge amount of demurrage on daily basis, therefore, she requests that consignment may be released on furnishing bank guarantee.

2. Mr. Kashif Nazeer advocate appearing for defendant No. 2 and 3 submits that assessment order in this case will be passed within two weeks after providing ample opportunity of hearing to the plaintiff and or their representative and copy of the order will be provided immediately. In case the adverse order is passed the plaintiff may file appeal to the Collectorate Appeals in accordance with law. So far as bank guarantee is concerned, learned counsel submits that the bank guarantee may be furnished to the satisfaction of defendant No.3 and he assures that till such time the Collectorate Appeals decides the appeal if any filed by the plaintiff the bank guarantee shall not be encashed. Order accordingly.

3. Learned counsel for the plaintiff shown apprehension that in case the High Court Appeals pending before the learned Division Bench filed by the department is dismissed then nothing will be recoverable by the plaintiff if the bank guarantee is encashed. It is clarified that in case the learned Division Bench maintains the judgment and decree passed in the above Suits then off course the plaintiff shall also be treated alike. The suit is disposed of along with pending application in the above terms.

JUDGE