

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 2179 of 2017

Date	Order with signature of Judge
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1. For hearing of CMA No. 16559/2017
2. For hearing of CMA No. 14060/2017

12.12.2017

Mr. Arshad Tayebali advocate for the plaintiff a/w Mr. Shahzad Nizam advocate.

Mr. Khadim Ali Metlo advocate for the defendant No.4.

Dr. Shahnawaz advocate for the Custom.

Imran Razzaq, Deputy Collector, Custom.

The plaintiff imported 500 M.T. Soya Bean and the consignee was the defendant No.4. On reaching the cargo at destination, the defendant No.4 refused to pick up the consignment. Learned counsel for the defendant No.4 is present and he confirms this statement.

Learned counsel for the Custom submits that on refusal by the defendant No.4, they have already auctioned the cargo and the successful bidder is Hamid Waheed representative of the M/s. Extraction Ghee & Oil Industries Pvt. Ltd., but the said auction purchaser has also filed application under Order I Rule 10 C.P.C. (CMA No. 16559/2017) and prayed for directions of this court to refund the amount as they are also not interested to pick up the consignment.

The plaintiff wants to re-export the consignment in terms of Section 138 of the Custom Act read with Rule 86 of the Customs Rules, 2001. Learned counsel for the plaintiff also referred to the judgment passed by this court in the case of PT. Synergy Oil Nusantara vs. Evergreen Marine Corporation reported in 2015 PTD 279 in which the learned Judge of this court after hearing the parties in paragraph No. 15 of the judgment directed the concerned collector to provide opportunity of hearing to the plaintiff and after taking into

consideration the IGM as well as all relevant documents decide whether it is frustrated cargo within the meaning of Section 138. Learned counsel for the plaintiff submits that in the same terms the order may be passed and some directions may be issued to decide the application of the plaintiff whether the plaintiff is entitled to re-export the cargo as frustrated cargo or not under Section 138 of the Customs Act. Dr. Shahnawaz, Advocate is representing the Custom Authority and Imran Razzaq, Deputy Collector, MCC West is also present. He submits that the plaintiff may file application tomorrow for deciding whether the consignment may be treated as frustrated cargo or not thereafter the concerned Additional Collector shall decide the application after providing opportunity of hearing to the plaintiff's counsel within seven days and he will submit the copy in the court. Order accordingly.

By consent adjourned to 22.12.2017 at 11:00 a.m.
Interim order passed earlier to continue till next date.

JUDGE

Aadil Arab