

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Suit No.366 of 2002,  
Suit No.367 of 2002 &  
Suit No.368 of 2002**

Date	Order with signature of Judge
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For final arguments.

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**15.03.2018**

Mr. Mazhar Imtiaz Lari, advocate for plaintiffs.

Mr. Manzar Hussain, advocate holding brief for Mr. Ghulam Haider Shaikh, advocate for defendants.

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The plaintiffs in these three suits have challenged the assessment of customs duty on the consignment as Palm Acid Oil at the rate of U.S.\$ 275/- per M. Ton instead of U.S. \$ 160/- per M. Ton and approached this Court before any adjudication in terms of Customs Act, 1969. This issue was supposed to be decided by the Adjudicating Authorities under the Customs Act, 1969, however, since there is no concept of interim relief to the plaintiffs before the Custom Authorities and they were allegedly charging a higher amount of custom duty on the basis of classification which has been disputed by the plaintiffs, the plaintiffs filed the instant suit amongst others with the following prayer clause (b) which is relevant:-

*“Pass an injunction restraining the defendants from assessing the value of the purpose of Custom duty at U.S. \$ 275.00 PER m. Ton on the consignment of 600.000 M. Tons Palm Acid Oil imported from Malaysia on board the vessel M.T. “CHEMSTAR PRINCESS” I.G.M. No./367/2002 dated 28.02.2002 under Index No.41 to 43 and recovering the same from the plaintiff and direct the defendants to release the plaintiff’s consignment on furnishing Bank Guarantee for the disputed amount of Rs.22,33,885/- till the final disposal of the case”.*

Learned counsel for the plaintiffs concedes that it is within the authority of the custom hierarchy to decide the classification and that exercise has not been done by the custom authorities owing to

the pendency of this suit. However, as an interim measure, the consignment has already been released by the custom authorities in compliance of the order dated 28.3.2002 on furnishing Bank guarantee to the tune of Rs,22,33,885/- passed on an application under Order XXXIX Rules 1 and 2 CPC.

In my humble view, the final adjudication about classification as per tariff heading for imposition of customs duty is outside the purview of civil Court and therefore, unless the plaintiff contest the claim of defendants before the adjudicating officers under the Custom Act, 1969 fully exhaust the remedy, the correctness and propriety of imposition of customs duty cannot be examined by this Court as it would amount to encroaching upon the jurisdiction of statutory forum. Therefore, all the three suits are disposed of with the following observations:-

- (i) The Defendant shall issue fresh notice to the plaintiffs and decide the quantum of Custom Duty on the consignment in dispute in these cases in accordance with the Custom Laws after taking into consideration all the relevant facts before them including evidence recorded by the parties before this Court and pass order in recording of the law.

In view of the above, all the three suits stand disposed of.

**JUDGE**

*A. Gul/PA\**