

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 1541 of 2017

Date	Order with signature of Judge
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Present

Mr. Justice Muhammad Ali Mazhar.

Sheikh Ameen & another.....Plaintiffs

Versus

Federation of Paksitan & others.....Defendants

Date of hearing 27.08.2018

Syed Ahsan Imam Rizvi advocate for the plaintiffs. Assisted by Mr. Abdul Rauf Malik and Agha Mir Mustafa Khan Durrani advocates.

Syed Wajahat Hussain, representative of the plaintiffs.

Syed Mehmood Alam Rizvi advocate for the Custom Department.

Muhammad Ali Mazhar, J: This suit has been brought for seeking declaration and prohibitory injunction that the seizure /detention notices dated 05.06.2017 (Annexure P-15 & P-16) issued by Custom Enforcement are illegal and without jurisdiction. They have further sought declaration that the plaintiffs are lawful and bona fide owner and importer of white spirit from South Korea. The injunction application was moved along with plaint when the Learned Single Judge vide order dated 12.06.2017 observed that unless grounds/show cause mandated by Section 180 are provided, the operation of the notices will be construed to have suspended leaving no coercive action be taken against the plaintiffs unless as provided by the

law. During pendency of injunction application, learned counsel for the Custom Department also moved an application under Order VII Rule 11 C.P.C. for rejection of plaint in view of the judgment passed by the learned Division Bench of this court in High Court Appeal No. 263 of 2016 and in some connected High Court Appeals. In this judgment dated 03.08.2017 the learned Division Bench held that in view of the bar contained under Section 217 of the Custom Act the civil suit is not maintainable. The learned counsel also raised some other grounds regarding the lodging of FIR in the same application.

2. The Judgment of the learned Division Bench of this court was challenged in the Apex Court, however, vide order dated 27.06.2018 passed in Civil Appeals No. 1171 of 2017 and some other connected Civil Appeals, the hon'ble Supreme Court held in sub-paragraph No. (3) of paragraph No. 18 that Section 217(2) of Custom Act bars the cognizance of suits filed in civil jurisdiction exercised by the civil courts and this bar cannot be extended to include the exercise of the same jurisdiction by the Single Bench of Sindh High Court at Karachi. After the judgment of the hon'ble Supreme Court in all fairness the question of jurisdiction has been settled down with regard to filing of suit in this court and its maintainability even in the customs cases. So the question raised with regard to maintainability of suit by the learned counsel for the Customs Department is over.

3. Learned counsel for the plaintiffs pointed out his statement filed on 19.10.2017 with which he attached order in original No. 241/2017 dated 02.10.2017 at page No. 633 passed in the case of M/s. SMD Sons which has instituted this suit through its proprietor Shaikh Ameen, whereas, the order in original No. 242/2017 dated 02.10.2017 is also attached at page No. 677 in respect of M/s. Power Industries Pakistan which has instituted this suit through its sole proprietor Shaikh Pervaiz Ahmed. In both orders in original Collector Customs observed that the Detecting Agency has not been able to establish its case against the respondents and failed to act in accordance with law resulting in commencement of the present adjudication proceedings. After these observations the Collector Customs vacated the show cause notices with further directions that the importer may deal with the consignment in accordance with law. After passing these orders in original, the department filed Custom Appeals before the Custom Appellate Tribunal, Karachi. The order is available at page No. 911 of the court's file which shows that this order was passed in seven consolidated appeals and the appeal against the plaintiff No. 2 was Custom Appeal No. K-138/2017, whereas, the appeal against the plaintiff No.1 was Custom Appeal No. K-1365/2017. The learned Custom Appellate Tribunal after discussing entire controversy held in paragraph No. 17 that the department has failed to convince that the impugned orders in original were not passed on sound footing. It was further observed in the same paragraph by the learned Tribunal that

the Adjudicating Authority has appropriately analyzed the facts and passed the judicious decision hence no interference was made in the orders in original and the appeals were dismissed.

4. At this juncture, learned counsel for the Custom Department submits that the department has already filed Special Custom Reference No.216 to 222 of 2018 which are pending in this court. However, the learned counsel for the plaintiffs submits that no notice has ever been issued to the plaintiffs.

5. Mr. Mhemood Alam Rizvi learned counsel for the Custom Department also pointed out an order dated 07.11.2017 passed by the learned Division Bench of this court in C.P. No.D-4821/2017. In this case a similar controversy was involved whether the consignment was white spirit or it was kerosene oil. He further submits that at that time only the order in original was passed and the petition was moved for the implementation of the order in original, however, the appeal was pending at that time before the Custom Tribunal. In the last paragraph of this order, learned Division Bench directed as under:-

“We have considered the matter. By way of interim arrangement, let the petitioner provide such security as satisfies the Nazir of the Court which regard to 15% of the declared value of the subject consignment and in addition thereto duty taxes etc. at the rate of 3% as applicable would be paid to the department. Once such security is in place Nazir shall issue an appropriate certificate and on presentation of certificate and payment of duty and taxes subject consignment shall be released. Adjourned.

Delay Detention Certificate may also be issued in respect of each consignment as per applicable rules and regulation.”

6. Learned counsel for the Customs Department further argued that the department had challenged this order in the Apex Court through Civil Petition No. 4939/2017 and some other connected petitions but vide order dated 03.01.2018 the hon’ble Supreme Court held that the petitions have been filed against an interim order of the High Court of Sindh and the Apex Court did not find the order passed without lawful authority or as arbitrary hence the petitions were dismissed with cost of Rs. 10,000/- in each case.

7. The orders in original were passed in favour of the plaintiffs and then such orders were also affirmed by the Custom Appellate Tribunal. The issue of maintainability of suit has already been dealt with by the Apex Court so during pendency of the Special Customs References, it would be appropriate to order the release of consignment on the same terms as directed by the learned Division Bench in C.P. No.D-4821/2017 to which both learned counsel agreed and also affirmed that the suit may be treated short cause and can be disposed of in view of the documents referred to above.

8. As a result of above discussion, the suit is disposed of by consent along with pending applications in the following terms;-

(i). The plaintiffs shall furnish security to the satisfaction of the Nazir of this Court with regard to 15% of the declared value of the consignment and in addition thereto

they will also pay 3% applicable duty to the Customs department.

- (ii). On furnishing security the Nazir shall issue a certificate and on presentation of the certificate and payment of duties and taxes, the consignment shall be released to the plaintiffs forthwith.
- (iii). The delay detention certificate may also be issued in respect of each consignment as per applicable rules and regulations.
- (iv). The security shall be retained by the Nazir subject to the final outcome of the aforesaid Special Customs References filed by the department.

JUDGE

Aadil Arab