

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Agha Faisal

C.P. No.D-4776 of 2021

M/s Al-Hamd Steel Furnace
Versus
Federation of Pakistan & others

Date of Hearing: 07.09.2021

Petitioner: Through Mr. Imran Iqbal Advocate.

Respondent No.1: Through Mr. Kafeel Ahmed Abbasi, Deputy Attorney General, and Mr. Hussain Bohra, Assistant Attorney General.

Respondent No.2: Through Mr. Khalid Rajpar Advocate.

Respondent No.3: None present.

Mr. Tariq Aziz, Principal Appraiser, Port Qasim.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Petitioner, being an importer of steel products, inter alia re-melting scrap, has filed this petition seeking amendment in Import General Manifest (IGM) under Weboc system in terms of Section 45(2) of the Customs Act, 1969 by respondent No.2, since it has been denied.

2. Petitioner claimed to have entered into a contract with the supplier M/s SNR through its commercial invoice dated 08.06.2021 for purchase of iron and steel remeltable scrap. The remittance claimed to have been effected through banking channel vide transaction dated 30.07.2021 by M/s Bank Al-Habib Limited. The goods however claimed to have been shipped from Port of loading to Port of discharge vide Bill of Lading No.LPL1023151 dated 08.05.2021. On arrival of the goods,

petitioner made an attempt to file Goods Declaration however it was not accepted on the count that the consignee's name in the manifest was different; the original manifest was in favour of M/s Royal Foundry. Learned counsel for petitioner submitted that necessary amendment was carried out in the name of the petitioner i.e. M/s Al-Hamd Steel Furnace on 02.07.2021 however it was reversed on the same day only after few minutes.

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

4. Necessary amendments in the Import General Manifest (IGM) are being sought by the petitioner under section 45(2) of Customs Act, 1969. Section 45 in substance deals with delivery of manifest in a conveyance under section 43 and 44, as the case may be, which manifest is required to be signed by the person-in-charge of the conveyance or by his duly authorized agent. Such manifest deemed to have contained and specify all goods imported in such conveyance. Subsection (2) of Section 45 relates to appropriate amendment in the manifest. This subsection provides that the appropriate officer shall permit the person incharge of a conveyance or his duly authorized agent to correct any "**obvious error**" in the import manifest or to supply any omission which in the opinion of such officer is a result of an accident or inadvertence, by furnishing an amended or supplementary import manifest or by making an amendment electronically and shall levy thereon such fees as the Board from time to time directs.

5. The vessel arrived and berthed on **20.06.2021** and the consignee on the crucial date was none other than M/s Royal Foundry. The goods were in fact shipped from port of loading to the port of discharge on 08.05.2021. On 09.06.2021 Inland Revenue issued notice/letter to the Collector Port Bin Qasim Karachi, Collector Karachi Port Karachi and

Collector Jamrood Road Peshawar for taking appropriate action for recovery of outstanding amount of Rs.71.179 Million towards excise duty and the default surcharge against M/s Royal Foundry bearing NTN No.3676380 since they (Royal Foundry) have failed to deposit the same despite issuance of several recovery notices and attachment of bank accounts. The concerned Collectorates, therefore, were informed that clearance of the imported goods of M/s Royal Foundry be stopped in terms of Section 14 of Federal Excise Act, 2005 read with Rule 60 of Federal Excise Rules, 2005 read with Section 48(1)(ca) of Sales Tax Act, 1990 and Sales Tax Rules 2006.

6. Faced with the situation the consignee M/s Royal Foundry did not appear for clearance of the goods, as claimed by the petitioner, while he was arguing. It is argued by the petitioner itself that since the consignee has failed to appear for clearance of the goods, perhaps on account of certain default, the amendment in the Bill of Lading was sought in the name of petitioner. This statement itself appears to be a collusive effort between the original consignee and the petitioner only to avoid payment of government dues, referred above.

7. The amendment, as sought by the petitioner, could not have been carried out in terms of Section 45(2) of Customs Act, 1969 as this section relates to an “*obvious error*” in the import manifest or an omission which in the opinion of such officer was result of an accident or inadvertence. Petitioner’s case has not fallen in any of such exceptions inviting and/or calling for an amendment or issuance of supplementary import manifest as it is apparently a deliberate attempt to provide an umbrella to the original consignee as against recovery of Rs.71.179 Million.

8. Subsection (2) of Section 45 prior to the amendment was followed by Section 3 which is as under:-

45.

(3) Except as provided in subsection (2), no import manifest shall be amended.

9. Previously there was absolutely no permission whatsoever for carrying out any amendment in the import manifest except as provided in subsection (2). This subsection (3) was replaced by a proviso introduced through Finance Act 2021 which now provides that **before berthing of vessel** or the crossover of the vessel, as the case may be, the person incharge of a conveyance or his duly authorized agent may amend the import manifest subject to rules notified by the Board. The bill was assented on 30.06.2021 for proposed financial year, whereas the ship arrived on 20.06.2021 12:00 a.m. The event, as disclosed in the petition, is since of 20.06.2021. The replaced subsection (3) of Section 45 would be applicable in the sense that except as provided in subsection (2) no import manifest shall be amended. Event disclosed is prior to amendment carried out via Finance Bill 2021. This would leave a very little margin, in fact no margin, for the amendment sought to be carried out in the import manifest in terms of subsection (2) as it is specifically for an obvious error or in fact an omission, which in the opinion of the concerned officer is a result of accident or inadvertence. In fact petitioner's case has not fallen in either of the two i.e. its case is neither covered by subsection (2) of Section 45 nor the proviso recently inserted by Finance Act, 2021.

10. The judgment as relied upon by learned counsel for petitioner is distinguishable on the count that in that case there was no notice issued to original consignee for payment of the outstanding dues against the original consignee, and the change of consignee is obvious mala fide in the instant case, and that led to allowing the amendment in the referred case as apparently there was no mala fide attempt.

11. We are therefore of the view that such amendment could not be carried out in terms of Section 45 of the Customs Act, 1969 as it is primarily an attempt to avoid payment and/or the consequences of recovery notice issued by the concerned officer of the Inland Revenue, Income Tax authorities. Consequently the petition is dismissed along with pending application.

Dated: 09.09.2021

Judge

Judge