

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No. 1814 of 2018

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DATE

ORDER WITH SIGNATURE OF JUDGE

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1. For hearing of CMA No.11095/19.
2. For hearing of CMA No.12848/18.

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**21.11.2019.**

Mr. Sardar Faisal Zafar, Advocate for Plaintiff.

Mr. Muhammad Bilal Bhatti, Advocate for Defendants No.1 & 3 along with Mr. Moeen Afzal Ali, Deputy Collector of Customs.

Mr. Adnan Ahmed, Advocate for Defendant No.2.

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**Muhammad Junaid Ghaffar J.-** The instant Suit has been filed by the

Plaintiff seeking following prayers:-

1. It is prayed to your Honour to direct the Defendant collectorate to decide the Application dated 12.12.2017 of the Shipping Line for Amendment in the Manifest, in accordance with section 45 sub Section 2 of the Customs Act 1969.
2. It is further prayed to your Honour, to hold in favor of the Plaintiff keeping in view the Plaintiff has in possession the original Bill of lading and has every right to invoke the remedy of filling the Plaint to secure from further hardship which he has already being facing since long wherein, due to the non action / non decision by the collectorate for the amendment in the manifest, to cure the error apparent on the record.
3. It is further requested / prayed to direct the Customs Authorities to consider the issuance of delay and detention certificates once G.D is filed by the Plaintiff after the orders of his Honorable Court for amendment of IGM in this regard.
4. It is further requested from this Honorable Court to implement the delay and detention certificates once issued by the Customs Authorities in compliance of the Section 14 (A) read with S.R.O 82(i)/2008, further read with S.R.O 1220(i)/2015.

Learned Counsel for the Plaintiff submits that the consignment in question was shipped / sent initially to Defendant No.5; however, since payments were not made, the shipper approached Defendant No.2 with a request to change the consignee's name i.e. in favour of the Plaintiff and for such purposes an amendment was issued by Defendant No.2; however, Defendant No.5 had already filed a Goods Declaration, and therefore, the concerned Deputy Collector has passed Order dated 15.08.2018, whereby, an unreasonable demand has been made to

arrange NOC of Defendant No.5 for cancellation of the G.D. According to him, Defendant No.5 has not turned up to defend the case, whereas, earlier some proceedings initiated by the said Defendant were pending before the Lahore High Court, but stands dismissed for non-prosecution. He has also referred to Rules 433 and 434 of the Customs Rules, 2001 and Judgment reported as **2015 PTD 761 (Belal Mostafa Sadeqi Ltd. through Special Attorney v. Deputy Collector of Customs and 4 others).**

On the other hand, learned Counsel for Defendant No.2 submits that though they have instructions to amend manifest in the name of the Plaintiff and appropriate request was also made with the Custom Department; however, defendant No.5 had approached Lahore High Court, therefore, they could not proceed further; but now such proceedings stand dismissed for non-prosecution. He has referred to the counter affidavit filed on behalf of defendant No.2 and submits that insofar as amendment in manifest is concerned, they have no objection, but it is for the Customs to accept the same and may further be directed not to take any coercive action against them.

On the other hand, Mr. Moeen Afzal Ali, Deputy Collector of Customs is in attendance and has filed his counter affidavit / written statement and submits that as per procedure the G.D could not be cancelled by the Custom Authorities for want of NOC of Defendant No.5. According to the learned Deputy Collector, some auction proceedings have also been initiated. He however, submits that this Court may pass appropriate orders which will be complied with.

I have heard all the learned Counsel as well as learned Deputy Collector of Customs and perused the record. Insofar as Defendant No.5 is concerned, despite being served after several repeated attempts, has not turned up to defend this Suit. Whereas, as informed the proceedings initiated by the said defendant before the Lahore High Court stands dismissed for non-prosecution. Moreover, I am of the view that even otherwise

the appropriate jurisdiction in question vests with this Court as the consignment is lying at the Port of Karachi.

Insofar as the Plaintiff is concerned as reflected from the counter affidavit of the Defendant No.2, proper instructions have been received from their counterpart to amend the manifest and change of the consignee name in favor of the Plaintiff. Reliance may be placed on Para-3 of the counter affidavit, which reads as under:-

“3. The true and relevant facts pertaining the above shipment are that the consignee on the bill of lading (Straight BL# **MSCUTB111304**) when the cargo was discharged i.e. on 3-(U/S 12(2) CPC)2017 in Pakistan was one M/s B.I.A Traders/Defendant No.5. The Defendant No.2, as agents of the carrier, filed the customs manifest in advance (48 hours in advance). Subsequently on 4-12-2017 the Defendant No.2 was informed by its counterpart in Turkey that they received request from the shippers for change of consignee. It is submitted that as per section 45 of the Custom Act, any amendment in the customs manifest is subject to the approval of the Customs authorities.

(iii) New consignee (MAC International) approached custom authorities for necessary permission. Customs required a written undertaking from the Defendant No.2 on non-judicial Stamp paper they will be responsible for any consequences arising from the change in consignee. The Defendant No.2, as agent of carrier, therefore, approached their principal for instructions as to issue written undertaking. However, in the meantime the consignee on Custom Manifest (in first set of BL) viz. Defendant No.5/B.I.A Trader contacted the Defendant No.2 and claimed that they have lost the originals of the BL and has not abandoned the cargo. The Defendant No.5 claimed that they have filed a Police Report/ First Information Report for loss of the original BL in relevant Police Station.

(iv) It is submitted that however, as per Port of Loading confirmation all three sets of old original bill lading were destroyed by them using a document shredder. Later, a letter of Indemnity was provided by the shipper. The load of port agent of the carrier therefore, issued new OBLs to the shipper. The Plaintiff is named as the consignee in this bill of lading, which is attached with the plaint.”

Since proper instructions have been received by Defendant No.2 in respect of ownership and title of the goods being vested in Plaintiff, the contention of the Plaintiff appears to be justified and the refusal to amend the manifest and to file fresh GD does not seem to be justified merely for want of NOC of Defendant No.5. Insofar as Defendant No.5 and its filing of Goods Declaration is concerned, it may be noted that apparently Defendant No.5 is not holding the original title of the goods in question, and therefore,

mere filing of Goods Declaration is not an impediment in entertaining the Plaintiff's request, coupled with the fact that Defendant No.2 has already received instructions from the Port of Loading / shipper for necessary amendment in the Import General Manifest. Insofar as auction proceedings are concerned, they appear to have been initiated without taking note of the pending proceedings as the Plaintiff has filed instant Suit on 11.09.2018 and department was duly served somewhere in November, 2018, therefore, such proceedings have no consequence as to the present Suit.

In view of such position, the Suit stands disposed of along with pending applications with directions to the concerned Deputy Collector to process the request of amendment of Import General Manifest (IGM) already submitted by Defendant No.2 in view of the above observations immediately read with relevant Rules, and allow filing of GD by the Plaintiff, notwithstanding the filing of Goods Declaration by Defendant No.5 which is required to be cancelled. Whereas, the plaintiff shall indemnify Defendant No.2 as to any further claim or consequences in relation to the claim of Defendant No.5 if any. Insofar as the Custom duties, fine, fee, penalty and other taxes are concerned, they are to be paid by the Plaintiff in accordance with the law and the duty and taxes paid by Defendant No.5, if any, has to be dealt with in accordance with law as well.

Suit stands disposed of along with pending applications in the above terms.

J U D G E