

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 136 of 2021

 DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

1. For hearing of CMA No. 949 of 2021.
2. For orders on CMA No. 3201 of 2021

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Date of Hearing 26.04.2022, 23.05.2022, 24.5.2022,
 31.05.2022, 01.06.2022, 02.06.2022 &
 03.06.2022.

Date or Order **24th November, 2022.**

Mr. Mamoon N. Chaudhary, Advocate for plaintiff.

Mr. Mohammad Khalil Dogar, Advocate for defendants No. 3, 5, 7 & 8.

Mr. Basit Nabi Malik, Advocate for defendant No. 10.

Allah Ditta Abid, Director Technical (Registration).

Syed Muzamil Hussain, Entomologist (PSW) Department of Plant
 Protection.

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This order is intended to decide an application under Order XXXIX Rule 1 & 2 R/W Section 151 CPC being CMA No. 949 of 2021, moved by the learned counsel for the Plaintiff accompanied by an affidavit of its authorized representative namely Muhammad Jan, whereby he prayed to suspend the operation of Impugned Certificate bearing registration No. (GENERIC)/DPP/2020/9610 dated 21.10.2020 (the "Impugned Certificate") and restrain the Defendants, jointly and severally, as well as their agents, servants, officers, representatives, subordinates, agencies, assigns and instrumentalities, from acting in pursuance of the Impugned Certificate, including but not limited to the sale, marketing, distribution and import of the product, i.e., 98% Methyl Bromide + 2% Chloropicrin (Mixture

Pesticide) and / or further restrain the Defendants, jointly and severally, as well as their agents, servants, officers, representatives, subordinates, agencies, assigns and instrumentalities, from permitting the sale, marketing, distribution and import of the Product; i.e., 98% Methyl Bromide + 2% Chloropicrin; till the final disposal of the instant Suit.

Brief facts of the case are that the plaintiff is engaged in the business of fumigation, extermination and pest control services and the import, manufacturing, marketing, distribution and sale of pesticides, therefore, the Plaintiff is seeking a declaration as to the illegality and nullification of the 'Certificate of Import Permission of Pesticide not having a Trade Name (Form 16A)' bearing registration No. (GENERIC)/DPP/2020/9610 dated 21.10.2020 (the "Impugned Certificate"), issued by Defendant No. 2 (Advisor and Director General Department of Plant Protection Plant Quarantine & Services Certification Office) in favour of Defendant No. 10 in respect of the product 98% Methyl Bromide + 2% Chloropicrin (Mixture Pesticide), in glaring violation of Section 4 of the Agriculture Pesticides Ordinance 1971 (the APO "1971") and Rules 9 and 9A of the Agriculture Pesticide Rules 1973 (the "APR 1973").

The Methyl Bromide 98 percent, 100 percent was included in the notification bearing No. SRO 131(I)/2000 dated 16.03.2000, issued by Ministry of Food, Agriculture and Livestock under Section 4 of the 1971 Ordinance. Thereafter, the said product was also included in the notification bearing No. SRO 636(1)/2005 dated 27.06.2005.

The Defendant No. 10 submitted its application dated 25.06.2019 for the registration of the Product before Defendant No. 2, while Product was never notified as a pesticide under Section 4 of the 1971 Ordinance. Accordingly, the Application suffered from serious legal infirmities. Despite the fact that the objections were promptly raised by the concerned stakeholders, Defendant No. 2 illegally and unlawfully issued the Impugned Certificate in haste, without proper scrutiny of the Application in respect of the Product, as the manufacturer of the Product is not authorized by the regulatory body, i.e., the Institute for the Control of Agrochemicals, Ministry of Agriculture, People's Republic of China (hereinafter referred to as **ICAMA**), to manufacture the product. The Product is not registered in the country of its origin, i.e., China, while it is a mandatory precondition under the applicable provisions of law that a pesticide can only be registered and the requisite forms 16 and 17 can only be issued in the event that the said product is registered in the country of origin; however, in some countries such as Germany, Switzerland, Mexico, registration procedures for registration of composition and specification of pesticides do not exist. These countries permit manufacturing and use of pesticides without registration of composition and specification of pesticides. Therefore, the Federal Government, in order to allow import of pesticides from such countries, introduced an amendment that proof of manufacturing from these countries would be acceptable in Pakistan. Defendant No. 2 has arbitrarily, whimsically and capriciously applied this exception in respect of this Product, which is imported from China, where

registration procedure for registration of composition and specification of pesticides exists.

It was also contended therein that appropriate steps should expeditiously be adopted in order to restrict the supply of the highly hazardous product in the market, however a consignment of the Product bearing No. KAPE-HC-131105 dated 18.01.2021 has arrived at the port operated by Defendant No. 10 and the official Defendants are facilitating the release of the same. The Plaintiff will be prejudiced and suffer irreparable loss in the event the consignment of the Product is cleared by the Defendants on the basis of the Impugned Certificate as the same will create a discriminatory precedent that would give rise to ready circumvention of the 1971 Ordinance and the 1973 Rules framed thereunder and pave the way for illegal import of the unauthorized products, which would be completely destructive of local industry and the Plaintiff's business and would be absolutely contrary to the very spirit and intendment of the aforementioned enactments and the notifications issued thereunder, hence this Suit with the following prayers :-

- (a) Declare that the 'Certificate of Import Permission of Pesticide not having a Trade Name (Form 16A)' bearing registration No. (GENERIC)/DPP/2020/9610 dated 21.10.2020, (the "Impugned Certificate"), in respect of the product 98% Methyl Bromide + 2% Chloropicrin (the "Product"), has been issued by Defendant No. 2 without lawful authority and is of no legal effect;
- b) Permanently restrain the Defendants, jointly and severally, as well as their agents, servants, officers,

representatives, subordinates, agencies, assigns and instrumentalities, through a perpetual injunction, from acting in pursuance of the Impugned Certificate, including but not limited to the sale, marketing, distribution and import of the Product and to suspend the same;

- (c) Permanently restrain the Defendants, jointly and severally, as well as their agents, servants, officers, representatives, subordinates, agencies, assigns and instrumentalities, through a perpetual injunction, from permitting the sale, marketing, distribution and import of the Product;
- (d) Grant any further and / or better relief;
- (e) Costs.

Notice of this application was issued against the Defendants.

The Defendant No.10 / Ahmed and Kamran Traders (Private) Limited has submitted Counter Affidavit, through its representative Ahmed Yar Khan Kakar, whereby it has been contended that no cause of action has accrued in favor of the Plaintiff as the Plaintiff himself is using the same product with the same formulation and the same product is being registered with the trade name of MEBRON having the same formulation, the only purpose of instituting the present Suit is to oust the defendant No. 10 from the lawful business in the chemicals and to maintain the monopoly of big giants in the business; the certificate of import was issued in favour of the Defendant No.10, after completing all the necessary procedural and codal formalities, as per agricultural and pesticide ordinance 1971 and the agricultural and pesticide rules 1973; the product which has been

imported by the Defendant No. 10 is Methyl bromide 98 % Chloropicrin 2 % and in the notification issued for the purpose of section 4 of the Agricultural and pesticide ordinance, the product Methyl bromide is present at serial No. 40 with the Specifications i.e. Methyl bromide 98 percent/100 percent and the products imported by the Defendant No.10 also is Methyl bromide having 98 percent, as far as the chloropicrin 2% is concerned , the same is added as a warning agent, as CH_3Br lacks adequate physiological warning properties and because bromomethane is an extremely toxic substance, which attacks the respiratory system even at very low concentrations, but with 2% chloropicrin, which even at very low concentrations is easily detectable by its pungent odor is often added. Chloropicrin is also added to cooking gas, giving the latter its familiar intense odor; in case of a leakage this material functions as an alarm signal, enabling the user to protect himself and the environment; import of CH_3Br is governed under rules 9A (1-4) of Agricultural and pesticide rules 1973; the Plaintiff has no locus standi whatsoever to institute the Suit for Declaration and Permanent Injunction as a few companies are continuously maintaining their monopoly in the marketing the same product i.e. National Chemicals is importing the same product and with the same specification, with the brand name of MEBRON having the formulation of Methyl bromide 98 % Chloropicrin 2%; the Defendant filed an application for the registration of product under Form 16 as per rules and regulations, furthermore the product has already been notified under section 4 of the Agricultural and pesticide ordinance, as the main ingredient is of Methyl bromide and

the same is present at serial No. 40 of the notification, the percentage required as per notification is of 98 percent and the product imported by the Defendant No. 10 fulfils the same. The product has already been registered in CHINA with the ministry of Agriculture People's Republic of China, vide registration Certificate No. 19-00108-QT-0068 with the formulation of 98% Methyl Bromide and Chloropicrin 2%. Furthermore, more Ch₃Br (98% and 2% chloropicrin) under brand, MEBRON, from USA was registered in Pakistan under Form-1 during 90's in the light of 8th APTAC (agriculture and pesticide advisory committee) recommendations in 1977 and still being used and imported by National Chemicals and despite the same formulation, their import certificate and usage has never been objected, which shows mala fide of the plaintiff; the Defendant No. 2 DPP (Department of Plant Protection) has also granted permission for Al-Asif enterprises to import it on Form-16 in 2002 from Linhai jianxin chemicals Co, Ltd China; subsequently, DPP granted permission to Four Brothers Biologic AG, from Changyi Chemical Plant, China; Adeel Pesticides and Manufacturing Co., from Changyi Chemical Plant, China and Pentagon Fumigation Services from Linhai jianxin chemicals Co, Ltd China in 2006; 2006 and 2012, respectively. The Defendant No. 10 has further contended that the product after the federal Govt. notification for the Ch₃Br under Form-16, vide SRO 631(1)/2000, dated March 20, 2000; DPP (Department of Plant Protection) granted permission for Al-Asif enterprises to import it on Form-16 in 2002 from Linhai jonxin chemicals Co, Lid China. The product is registered in China institute of

Control of Agrochemicals Ministry of Agriculture (ICAMA) , department of plant protection has also granted permission to import Ch3Br on form-16 to Pest Management Services on 31.03.2016 from Intech Pharma Private Limited, India. Ch3Br in India is registered with the Directorate of Plant Protection, Quarantine and storage, Ministry of Agriculture as 98% active ingredient and 2% (chloropicrin) other ingredients. Resultantly the firm regularly imported the product from India.

Import of Ch3Br is governed under rules 9A (1-4) of APR, 1973, and it is alongwith chloropicrin is being used in USA, Canada, India, Australia and other countries. The chemical had already arrived on the port on 13.01.2021 and thereafter this Suit has been instituted with mala fide intention and the import certificate had already been executed, therefore, no cause of action has accrued in favour of the Plaintiff as the Plaintiff has failed to disclose any cause of action.

The learned counsel for the Plaintiff has filed its Affidavit in Rejoinder through its authorized representative, whereby the Plaintiff has re-iterated the contents of its application under Order XXXIX Rule 1 & 2 CPC and denied the contents of the Counter Affidavit filed by the Defendant No. 10 through its representative.

I have heard the learned counsel for the Plaintiff, Entomologist namely Syed Muzammil Hussain in person on behalf of the Defendant No. 2 and Mr. Basil Nabi Malik, Advocate appearing on behalf of main contesting Defendant No. 10 and also have perused the entire record

of the file including written Synopsis of the Plaintiff's counsel and the Defendant No. 2 and 10 with due care and caution.

The learned counsel for the Plaintiff, Mr. Mamoon N. Choudhry in his written arguments (Synopsis) and verbal arguments primarily and principally agitated following aspects in support of his contentions.

- (a) That 'Impugned Certificate' issued by the Defendant No.2 in respect of the product i.e. Mixture Pesticide is against the relevant law and rules i.e. Section 4 of the Agriculture Pesticides Ordinance 1971 and Rules 9 & 9A of the Agriculture Pesticide Rules, 1973.
- (b) That Methyl Bromide 98 percent, 100 percent was included in Notification No. SRO 131(1)/2000 dated 16.03.2000 by the Ministry of Agriculture, Government of Pakistan under Section 4 of 1971 Ordinance and subsequently same product was also included in the Notification No. SRO 636(1) 2005 dated 27.06.2005.
- (c) That the manufacturer of the product is not authorized by the regulatory body i.e. the Institute for the Control of Agrochemicals, Ministry of Agriculture, China, (ICAMA) to manufacture the product.
- (d) That mandatory pre condition of applicable provisions of law which specifies that a pesticide can only be registered on requisite form 16 and 17, can only be issued in the event that the said product is registered in the country of origin. However, import from certain countries is exempted from applicability of such condition and that China is not included in such list as such

import of product in question from China is against the law.

- (e) That in the event of clearance of consignment from the Karachi port on the basis of 'Impugned Certificate' will pave way for illegal imports which will be destructive of local industry and Plaintiff's business, local stake holders and the welfare of the country and that no relaxation of the APO 1971 is permissible on case to case basis as it tantamount to preferential treatment, thereby in violation of the constitution.
- (f) That Defendant No. 2 has facilitated perpetuation of fraud by the Defendant No.10 and that the 'impugned certificate' was issued without due process and without merits.
- (g) That the official Defendants were facilitating the release of the consignment, therefore, Plaintiff was contained to institute the instant suit.
- (h) That the pre-shipment inspection report (hereinafter referred to as "PSI" report) issued by the Defendant No.2 on or about 27.01.2021 was subsequently cancelled by the Defendant No.2 vide office order dated 02.02.2021, wherein it is explicitly written that the 'impugned certificate' was issued in violation of Section 4 of APO 1971 and rule 9 and 9A of APR 1973, later on same Defendant issued a Letter dated 11.02.2021, whereby it declined for issuance of 'PSI report' for the subject consignment.
- (i) That the Defendant No.10 instituted Writ Petition No. 3941 of 2020 before the Islamabad High Court, which was dismissed through Judgment dated 12.02.2021. The Islamabad High Court also ordered an inquiry into the affairs of Department

of Plant Protection through the concerned Secretary.

- (j) That a complaint was lodged before Federal Ombudsman on 20.01.2021, whereon Ombudsman held that 'Prime facie registration of Defendant No. 10 M/s. Ahmed and Kamran Traders' was contrary to the mandatory provisions of law.
- (k) The learned counsel for the Plaintiff has prayed that the interim order dated 20.01.2021 passed by this Court on CMA No. 949 of 2021 may be confirmed by allowing Plaintiff's application filed under Order XXXIX Rule 1 & 2 CPC as prayed. In support of his contention the learned counsel for the Plaintiff placed reliance on the following Judgments: -
 - i) R.B. Avari & Co (Pvt) Limited v. Federation of Pakistan and another, reported in 2007 CLC 157.
 - ii) Messers Shaikh Sali Ali (Pvt) Limited v. Collector of Customs, Lahore and another case reported in 2009 PTD 1274 (1281A).

The Defendant No. 2 has not submitted Counter Affidavit to the present application under Order XXXIX Rule 1 & 2 CPC, however, the Defendant No. 1(a) and 2 have jointly submitted their written statement and Syed Muzammil Hussain (Entomologist) has provided technical assistance to this Court on behalf of the Defendant No. 2. Per Defendant No. 2 the then D.G of Defendant No. 2 issued the impugned certificate in glaring violation of relevant provisions of law and that disciplinary proceedings were also initiated against the said officer. It is further contended by the Defendant No. 2 that the Defendant No. 10 did not fulfil legal requirements as contemplated in SRO 131 (1) 2000 dated 16.03.2000 and SRO 636 (1) 2005 dated

27.06.2005 and that perusal of website 'ICAMA' reveals that the product was not registered in the country origin i.e. China.

The representative of Defendant No. 2 has further submitted that during the pendency of instant lis DPP (Department of Plant Protection) unauthorizedly issued another certificate of import permission of pesticide not having a trade name (Form 16A) bearing Registration No.(GENERIC)/DPP/2022/10872 dated 26.04.2022 in favour of Defendant No. 10, which is in violation of ad-interim order dated 20.01.2021 passed in present Suit, more so, it was issued in violation of Section 4 of APO 1971 and Rule 9 and 9A of APR 1973. He further submitted that legality and validity of the said 'Certificate' was also challenged before this Court through institution of Suit No. 733 of 2022, whereon this Court passed an ad-interim order dated 12.05.2022 suspending the operation of the said 'Certificate'. He further submitted that Methyl bromide 98% + Chloropicrin 2% had never been notified by the Federal Government in the official gazette for registration/import permission to import in Pakistan on Form 16.

Conversely, the learned counsel for the Defendant No. 10 during the course of proceedings agitated following factual and legal grounds:

- (a) That in terms of suit instituted, the Plaintiff only sought the declaration of 'impugned certificate' as illegal and without lawful authority and other relief sought were stemming from the said alleged illegality as such upon cancellation of impugned certificate on 02.02.2021 during the pendency of proceedings, instant suit becomes infructuous upon ceasing of any cause of action.

- (b) That the 'cause of action' of the plaint unequivocally states that the cause of action would only remain unabated till such time that 'impugned certificate' not set aside, thereby clearly indicating that upon nullification and/or a declaration of illegality of the said certificate, the cause of action would cease to exist. It is clear from the body of the plaint that entire subject matter of the suit revolves around and pertains to the 'impugned certificate' in question. The prayer clause of the plaint also reflects the same. The learned counsel for Defendant No. 10 in support of his contention mentioned above has relied upon the judgment of this Court reported in 2017 YLR 138 (Sindh).
- (c) That the prayer clause (c) pertains to an injunction as stated above on the basis of alleged illegality of the 'impugned certificate' itself and the said prayer is being sought on the basis of such illegality. More so prayer clause (c) and (d) are to be read alongwith the body of the plaint and in any case cannot travel beyond the scope of the pleadings. Accordingly, prayer clause (c) and (d) shall be limited to alleged illegality and unlawfulness of 'impugned certificate'. The learned counsel for the Defendant No. 10 in support of his contention has relied upon the judgment of this Court reported in PLD 2004 Karachi 492 (relevant page 497), 2012 SCMR 1688 (1690), 2009 CLD 1564 (1570) and 2014 SCMR 922 (933, 937 & 938).
- (d) That the suit in question has become infructuous and liable to be rejected for the reason that 'there is no cause of action because the said 'impugned certificate' including three other certificates on the identical issue had been recalled and cancelled by the Defendant No.2 and has also declined the 'PSI report' pertaining to the release of consignment as such plaint is not maintainable and liable to be rejected under Order VII Rule 11 CPC. In support of his

contention, the learned counsel for Defendant No.1 relied upon following case laws:-

- (i) Shipping Corporation of India v. Machado Brothers and Ors, AIR 2004 SC 2093.
- (ii) 1989 SCMR 1754 (1755).
- (iii) 2017 YLR 138 (148 & 149).

Learned counsel for the Defendant No. 10 also through written and verbal arguments emphasized that not only on the point of maintainability of the suit but also factum of the matter in hand, the suit of the Plaintiff is not entitled to the relief (s) as sought in instant CMA No. 949 of 2021, while arguing such prospectus, he put forth many prepositions as to application of Section 4 of APO 1971, Rule 3, 4, 9 & 9A and APR 1973, and Form-1, Form-16 and Form-17 as prescribed by the said Rules.

It was agitated by the learned counsel for Defendant No. 10, that the Defendant No. 10 applied for import permission specifically and solely on Form-16 and that under Form-16, importer has to show registration of the product in the country of manufacture or proof of manufacturing. It was also averred that the manufacturer in China M/s. Linhai Tianxin Chemical Co. Ltd through their letter dated 18.11.2020 also certified that they are the manufacturer of Methyl Bromide 98 percent + Chloropicrin 2 percent as warning agent as per requirement of Pakistan and 'ICAMA' has already confirmed it.

The learned counsel for Defendant No.10 has further argued that Defendants No.1 & 2 malafidely issued show cause notice dated 25.01.2021 to the Defendant No. 10 on the pretext that it had not filed all relevant documents and that the 'impugned certificate' issued

in violation of law and thereafter the 'impugned certificate' was cancelled with 'immediate effect' vide order dated 02.02.2021, albeit after considering the reply submitted by Defendant No.10. It was argued that such certificate not been cancelled 'retrospectively' more so Defendant No.2 permitted Defendant No. 10 to apply afresh for a new permission/certificate. Further that Defendants No.1 & 2 refused to endorse the 'PSI report' dated 04.01.2021; Review application of Defendant No.10 was also declined on 04.08.2021 by the Defendants No.1& 2 although they both knew that the consignment of Defendant No. 10 is stuck at sea port in Karachi on account of cancellation of 'impugned certificate'. It was emphasized that 'Mixture Pesticide' is regularly being imported into the country and that 'MEBRON' is a brand that contains the identical chemical yet it is allowed to be imported by the National Chemicals and that the Plaintiff himself utilizing, selling and distributing the same formulation and also has purchased the same chemical compound/mixture from National Chemical recently on 21.02.2022. The learned counsel for Defendant No. 10 also put forth few more examples, wherein M/s. Al-Asif Enterprises, M/s. Pest Management Services Pvt. Ltd and M/s. Pentagon Fumigation Services were allowed the registration.

It was reiterated by the learned counsel for Defendant No. 10 that Defendants No. 1 and 2 had notified S.R.O No. 131(1)/2000 dated 20.03.2000, wherein Methyl Bromide 98 percent was mentioned at entry No. 40 and such entry was subsequently also retained in S.R.O

No. 635(1)/2005 at same entry No. 40 as '40-Methyl Bromide, 98 percent 100 percent'.

Advancing arguments, the learned counsel for the Defendant No. 10 stated that logical conclusion of 98% Methyl Bromide shall be that 2% other non-active ingredients could be mixed with the actual active compound otherwise there was no need to mention 98%, 100%. In support of active ingredient and non-active ingredient, the learned counsel cited various scientific definitions including from National Pesticide Centre established under a co-operative agreement between Oregon State University, USA and the US Environmental Protection Agency, which says :-

"the Pesticide formulation is a mixture of active and other ingredients (Previously called inert ingredients). An active ingredient is a substance that prevents kill or repels a pest acts as a plant regulator, desiccant, defoliant synergist, or nitrogen stabilizer. Pesticide come in many different formulations due to variations in the active ingredient's solubility, ability to control the pest and ease of handling and transport.

Other (or inert) ingredients may aid the application of the active ingredient. Other ingredients can be solvents, carriers, adjuvant, or any other compound besides the active ingredients, which is intentionally added-----".

It was further argued by the learned counsel for Defendant No. 10 that the Federal Government notifies products in terms of the concentration of its active ingredient as such there are many entries in the Notification of Defendant No. 1, which merely notified the active ingredients of varying percentage including (i) Chlorpyrifos 40EC, 95% ULV.

It was stated that Chloropicrin itself is not an active ingredient in Methyl Bromide 98% rather it is added as warning agent due to its strong odor and quality of causing irritation to eyes. It was further added that Methyl Bromide itself has no such quality to indicate its presence, therefore, Chloropicrin may be added to it in order to get warning sign of the presence of Methyl Bromide toxicity, where such warning is necessary or expedient. The learned counsel quoted from the Extension Pesticide Program: Soil fumigation, University of Hawaii; USA as under:-

"Since Methyl Bromide by itself has no irritating qualities to indicate its presence, many formulations contain Chloropicrin as a warning agent. Chloropicrin has a strong odor and is very irritating to the eyes. All Methyl Bromide formulations must contain Chloropicrin-Mention of Methyl Bromide as a soil fumigant in this manual is with the understanding that Chloropicrin is part of its formulation AND Chloropicrin is generally combined with other fumigant, such as Methyl Bromide and 1, 3-D to increase the range of pests to be controlled and as a warning agent when added to odorless Methyl Bromide. When added to Methyl Bromide formulations at a concentration of 2% or less, it is considered to be only a warning agent. When used at concentration greater than 2%, it is considered to be an active ingredient that augments the fumigant activity of Methyl Bromide."

The learned counsel for Defendant No. 10 also put light over toxicity of Methyl Bromide, which is odorless and colorless and subjects may not be aware of the exposure to it. He also quoted from National Pesticide information Centre, USA that in humans Methyl Bromide can cause corrosive effects to both eyes and skin. Further

the signs of Methyl Bromide poisoning, may include headaches, nausea, vomiting, difficulty with vision, loss of co-ordination, slurred speech, and skin, eye and respiratory irritation. In severe poisonings, paralysis, convulsions, coma and death may occur. Signs may be delayed only a few minutes to 48 hours following Methyl Bromide exposure. Researchers also suggest that long term exposure to low levels of Methyl Bromide affects the nervous system, but evidence is not conclusive.

It was further argued that Methyl Bromide is used in plethora of activities, which require human interaction, a warning agent is imperative for the safety of people that may be exposed to it. He stated that as per Plaintiff's own website, Methyl Bromide is frequently used for fumigating timber, agricultural product, empty containers, food stuffs, and other agricultural produce.

On the other hand Department of plant protection (hereinafter referred to as DPP) is an attached department of Ministry of National Food Security and Works as "Regulator" for standardization and import of Pesticide in accordance with 'APO 1971' and 'APR 1973' explains various modes of Registration of import of Pesticides i.e. Form-1, Form-16 and Form-17 as provided in APO 1971. The statement clarifies various modes and prerequisites for import of Pesticides on above mentioned 'Forms'. It was stated that Defendant No. 2 is not authorized to issue registrations/import permission for import of Pesticides on Form-16 in Pakistan, which are not included in Notification No. S.R.O 636(1)/2005 issued by the Federal

Government. It was further stated that the DPP issued registrations in respect of the 'Mixture Pesticide' to M/s. AG Services & Supplies, Karachi in 1976 and M/s. National Chemicals, Karachi in 1990 pursuant to the approval of Agricultural Pesticides Technical Advisory Committee (APTAC) for use as fumigant for quarantine purposes on Form-1. It is further stated that on March 16, 2000, the Federal Government notified 'Methyl Bromide 98%, 100%' in the official gazette vide Notification No. S.R.O 131(1) 2000 for the purpose of registration/import permission through Form-16, subsequently the product 'Methyl Bromide 98%, 100%' were included by the Federal Government in the Notification No. S.R.O 636(1) 2005 alongwith other products, which is currently effective rescinding all previous Notification and that Federal Government has never notified 'Methyl Bromide 98% + Chloropicrin 2% (Mixture Pesticide)' in the official gazette in respect of registration/import permission through Form-16, therefore, DPP is not authorized to issue registration/import permission certificate of above mentioned mixture, however, such mixture can be imported under Form-1 mode.

It is further stated that DPP issued registration/import permission and renewal of registration/import permission of the 'Mixture Pesticide' from Chinese and Indian manufacturers on Form-16 to for other importers from 2000 to 2019 despite the fact that this mixture product was not included in S.R.O 2000 and 2005 respectively, yet Methyl Bromide 98%, 100% were included in aforementioned both the Notifications and that are neither technically nor legally equivalent to Methyl Bromide 98% +

Chloropicrin 2% (Mixture Pesticide) being two distinct mixtures. It was further stated that despite the pointation of facts as narrated above by the then Deputy Director to the then PPADG, the later kept pending the matter for 17 months; the Defendant No. 10 submitted incomplete file on 26.06.2019 on Form-16 for registration/import permission, which was liable to be rejected on 27.06.2020 but instead the then PPADG granted such registration/permission on 20.10.2020 specifically against Rule 4(8) of APR 1973 just one day before his charge/transfer. As per statement, when such matter came into the knowledge of incoming PPADG, he initiated the process of recalling registration before filing of present suit and finally cancelled the registration/import permission of all companies including Defendant No. 10 in respect of 'Mixture Pesticide' issued on Form-16 after personal hearing under Section 7 of APO 1971 and upon consideration of fact that the Federal Government never notified the 'Mixture Pesticide' in the official gazette. It was further stated that the Defendant No. 2 had declined the request of Defendant No. 10 for endorsement of 'PSI report' in respect of releasing consignment and entry into Pakistan. It was stated that Defendant No. 10 and other three companies had filed Writ Petitions No. 3941 of 2020, 332 and 317 of 2021 before Islamabad High Court and C.P No. D-1465 of 2021 before this Court at Karachi against Defendants No. 1(a) and 2, which were dismissed by the High Courts on 12.02.2021 and 13.03.2021 respectively.

It was further contended that the Defendant No. 10 has produced on record a document, which shows that the manufacturer

has the ability to produce the Mixture Pesticide (Methyl Bromide 98% + Chloropicrin 2%), whereas the website of 'ICAMA' shows that only Methyl Bromide 99% is registered in China for use. However, DPP considers and accepts proof of manufacturing or registration of Pesticides as per Rule 9A(1)(d) of APR 1973 for registration/import permission of Pesticides included in S.R.O 636(1)/2005. As the Mixture Pesticide is not included in rescind S.R.O 131(1)/2000 and effective S.R.O 636(1)/2005, and Defendant No. 2 is not authorized to consider it for registration/import permission certificate of the said 'Mixture Pesticide', hence, Defendant No. 2 did not consider it and cancelled the said registration/import permission certificate (impugned certificate). The defendant No. 2 did not consider proof of manufacturing for grant of registration/import permission certificate to aforesaid Mixture product on Form-16 and that unregistered composition and specification of product can be hazardous and detrimental to human health and environment due to lack of toxic studies. It was further reiterated that present PPDA G, Defendant No. 2 has taken cognizance of the said registration/import permission certificate including three others issued in disregard of Section 4 of APO, 1971 and Rule 4(8) and Rule 9A(1) to (4) of APR 1973 and cancelled the said registration/import permission certificate on 02.02.2021 after due official procedure and had also declined the request of Defendant No. 10 for endorsement of 'PSI report' pertaining to the release of consignment. It was finally averred that since the Defendant No. 2 has already cancelled the 'impugned certificate' including others such certificates, therefore, this Court

lacks jurisdiction to try suit for Declaration for the Cancellation of 'impugned certificate' which is no more in the field.

I have minutely gone through the record, written submissions, averments and contentions put forth by the relevant parties in the shape of Counter Affidavits, Rejoinder and through verbal assertions. Needless to say that all the parties concerned have presented their case vigorously putting great efforts.

The Plaintiff through filing instant application (CMA No. 949 of 2021) prayed for suspension of the operation of impugned certificate bearing registration Number (GENERIC)/DPP/2020/9610 dated 21.10.2020 and for restraining the Defendants from acting, selling, marketing, distributing and importing of the product i.e. 98% Methyl Bromide + 2% Chloropicrin till final disposal of the suit. The Plaintiff through filing instant suit sought Declaration regarding impugned certificate issued by the Defendant No. 2 as of no legal effect as the same, according to the Plaintiff was issued without lawful authority. In this perspective needless to accentuate that the impugned certificate, alongwith three other such certificates, has already been cancelled by the Defendant No. 2, PSI report was also declined by the Defendant No. 2 for the consignment (Mixture Pesticide) already imported by the Defendant No. 10 and lying at port at Karachi. The Defendants No. 1(a) and 2 themselves admitted in their written submissions that the then PPADG of Defendant No. 2 granted the impugned certificate/import permission by misusing his authority, however, it was not explained that how and why import

permission/renewal to other three such importers was granted during this period, which gone unabated and unnoticed by the relevant ministry as it all was being done by the Defendant No. 2 with impunity. It was also not explained that, if it was the case of misuse of authority by the immediate outgoing PPADG, who was also proceeded with departmentally, what action was taken against other departmental heads, who were keep issuing or renewing such identical permissions, besides, the other three importers would have been continuing to extract benefits of import permission(s) already issued or renewed to them in the record or distant past and consequent import of 'Mixture Pesticide' (Methyl Bromide 98% + Chloropicrin 2%) may have carried on without any notice or restriction.

It is evident that one M/s. Al Asif Enterprises, Karachi was allowed to import of 'Mixture Pesticide' from 'Linhai Jianxin, China (same industry, who manufactured for Defendant No. 10), as Generic Mixture vide certificate of Renewal of import permission dated 24.10.2016 and M/s. Pest Management Services (Pvt) Ltd as Generic Mixture vide certificate of Renewal of Import Permission dated 06.03.2018 from Intech Organic Limited, India, website of Intech provide following information about the Pesticide :-

Product type

- Inbrom 100 : It consists of 100% Methyl Bromide.
- Inbrom 98 : It is a formulated product consisting of 98%
Methyl
Bromide and 2% Chloropicrin (warning agent).

Yet in another case, same 'Mixture Pesticide' was allowed to be imported as Generic by the Pentagon Fumigation Services vide certificate of Import Permission dated 09.03.2018. Similar product (Mixture Pesticide) was also allowed to be imported from USA with the brand name "MEBROM".

Available record depicts that M/s. Linhai Jianxin Chemical Co. Ltd wrote a 'Letter of Authorization' dated 5th June, 2019 to PPADG, confirming therein that they are basic manufacturer of Methyl Bromide TC vide Registration No. PD 84122-2, issued by the Institute for the Device of Agrochemicals, Ministry of Agriculture, PR China (ICAMA) and that they have authorized M/s. Sunrise Group Corporation, Zihejiang, China to export Methyl Bromide 98% + Chloropicrin 2% (finished gas to use and not classified in technical). It was further added that such authorization is valid till 31st December, 2023. Attached with the above stated letter of authorization is a certificate from China Council for the promotion of International Trade (CCPIT), China, Chamber of International Commerce, verifying the contents of the referred letter to be genuine. Record further reflects availability of another document titled as 'Pesticide Registration Certificate' bearing No. 19-00108-QT-0068 ICAMA, whereby the relevant Government agency of China dealing with the registration of Pesticide/Agrochemicals testified that the 'Linhai Jiaxin' Chemical Co. Ltd has a Pesticide Production license and own the ability to produce Methyl Bromide 98% + Chloropicrin 2%, which is in the scope of manufacturing. Another certificate issued by the Technology Centre of Jinling Customs, China dated 18.12.2020

certifies that the test sample of the Mixture to be exported contains Methyl Bromide 98.14% and Chloropicrin 1.83% making a total 99.97% Mixture.

Now the question arises that, whether the Mixture in question comes within the Preview of Section 4 of APO 1971, Rule 9 & 9A of APR 1973? Admittedly, S.R.O 636(1)/2005 dated 27.06.2005 was in field when the impugned certificate/import permission was issued, according to said S.R.O Pesticide not having the trade names were importable by the authorized Pesticide Importers and Public Sector/Government Departments; in the said S.R.O at Serial No. 40, Methyl Bromide 98%, 100% is mentioned, however, no clarification mentioned for 2% ingredient of Methyl Bromide 98% is imported instead of 100%. Defendant No. 2 for a long time allowing 'Mixture Pesticide' (Probably) on the analogy that room let for 2% is for inactive/inert ingredient (could be warning agent or catalyst etc., as may be scientifically expedient), as such, Defendant No. 2 was issuing Registration Certificates/Import Permissions over a long period of time for the import of Mixture of Methyl Bromide 98% + Chloropicrin 2% (as warning agent) as is also evident from the website of Intech Organics Ltd, India. More so, according to US Environmental Protection Agency, Office of Pesticide Programs REO fact Sheet : (July 10, 2008) Chloropicrin :- Benefits Chloropicrin has benefits both as a Methyl Bromide alternative and as a warning agent to make people aware of potential exposures to other fumigants such as Methyl Bromide and sulfuryl fluoride.

It is no riddle that Methyl Bromide is a colorless, non-flammable gas that has no distinct odor except at high concentrations; consequently its use is prioritized according to requirements as Insecticide or Pesticide, while being used as Form Pesticide as soil fumigant, it may be used with small quantity of Chloropicrin not more than 2% as warning agent in order to warn and prevent users from the toxic inhalation of odorless Methyl Bromide and it is the reason that above referred S.R.O stipulate Methyl Bromide 98% leaving room for a warning agent, where necessary, especially in Farm/Agriculture usage. There are many toxic studies available about the use of Methyl Bromide (Me Br) and Chloropicrin (CP) on the web.

It is also evident that the consignment was imported on the strength of Impugned Certificate/Impugned Import Permission during its legal validity perused and such Certificate/Permission was cancelled subsequently; as such Defendant No. 2 cannot lay onus of any irregularity (if committed) upon Defendant No. 10 as it will be prejudice to the rights acquired by the said Defendant through Impugned Certificate/Import Permission. Furthermore, Defendant No. 2 cannot invoke its authority retrospectively as it will be against the settled principles of law that 'when a right is existed or accrued during the currency of an statute, it cannot be taken back except specifically provided in subsequent statute, more so, Defendant No. 2 cannot invoke notifies retrospectively because rules, regulations, statutory, regulatory orders and notifications are deemed to be the subsidiary legislation having no retrospective effect.

In view of the foregoing discussions and deliberations, interim order passed in CMA No. 949 of 2021 is vacated, consequently Defendant No. 2 is directed to endorse the pre-shipment inspections report of Defendant No. 10 and custom authorities to clear the consignment in accordance with relevant applicable laws and rules.

Before parting with this order passed under Order XXXIX Rule 1 & 2 CPC on the application of the Plaintiff (CMA No. 949 of 2021) it would be expedient to discuss the instant matter in the light of current scenario too. The Plaintiff has come to this Court, when alleged cause of action accrued to him on 21.10.2020 owing to the reason of issuing the Impugned Certificate in favour of Defendant No. 10. He sought declaration that such Impugned Certificate of Import Permission of Pesticide has been issued by the Defendant No. 2 without having lawful authority and is no legal effects. He sought further relief of Permanent Injunction against the Defendants from acting in pursuance of the Impugned Certificate and to suspend the same. The Defendants have submitted their Counter Affidavits, wherein they have repeatedly submitted that after cancellation of the Impugned Certificate there remained no cause of action to the Plaintiff to continue the present proceeding, hence plaint should be rejected under Order VII Rule 11 CPC.

No doubt the entire controversy of this matter revolves around the impugned import certificate and it is also an admitted position that the impugned certificate has been recalled later on by the Defendant No. 2, which means that the subject certificate is no more

in field, hence if the full dress trial in present suit is to be proceeded further even then at the end parties would achieve nothing in any case., I am therefore of the clear view in my mind that further proceedings of this issueless matter having no cause of action would be futile exercise. It is settled law that where at any given time, cause of action ceases to subject or bar under any law comes into operation and that position is discernible from the plaint, recourse to order VII, Rule 11 CPC can be taken, hence in this situation, where admittedly there remain no cause of action, the plaint should be rejected under Order VII Rule 11 (a) CPC. Order passed accordingly. All pending applications are also disposed of. There shall be no order as to cost. Office is directed to prepare Decree of rejection of plaint in this matter.

J U D G E

Faheem/A