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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8878 OF 2017
ALONG WITH
WRIT PETITION NO.8902 OF 2017

ETG Agri India Pvt.Ltd. ...Petitioner
(IN BOTH PETITIONS)
vs.
Union of India and others ...Respondents
(IN BOTH PETITIONS)

Mr.Nikhil Wable with Mr.Rubina Dedhia with Mr.Aneesh
Deshpande i/b Jayakar and Partners for the
Petitioner
Mr.M.Dwivedi i/b Ms Shalaka Gujar for the respondent
Nos.1 to 3.
Mr.Agasti Vibhute for respondent No.5

CORAM : A.S.OKA, &
A.K.MENON,JJ.
DATE : OCTOBER 9, 2017

P.C.:

1 Heard the learned counsel appearing for the petitioner. The learned counsel appearing for the respondent Nos.1 to 3 and the learned counsel for the respondent No.5. Considering the narrow controversy involved in these two petitions, the same are forthwith taken up for final disposal. Considering the nature of the order which we propose to pass, service to the respondent No.4 is dispensed with. We are referring to the facts of the case in the Writ Petition No.8878 of 2017.

2 The subject goods were sold by the respondent No.5 to the respondent No.4. It appears that the

respondent No.4 failed to make payment for the goods. The petitioner in this petition is alternate buyer. An application was made by the petitioner to seek amendment of the Import General Manifest (for short 'IGM'). The petition proceeds on the footing that the petitioner was informed that unless no objection certificate is issued by the respondent No.4, the application for modification of the IGM will not be considered. The main submission is that as the respondent no.4 is neither a consignee nor a consignor, the no objection certificate of the respondent No.4 is not required. The learned counsel for the respondent Nos.1 to 3 has placed on record a circular dated 11th April 2017 and in particular Item No.18 of the Annexure to the Circular which deals with the change of name of the importer/consignee in the IGM. The learned counsel for the respondent Nos.1 to 3 submitted that if the petitioner complies with the requirement of producing documents at Item No.18, the application will be processed and disposed of.

3 The learned counsel for the petitioner has invited our attention to the Judgment dated 20th December 2016 in Writ Petition No.2843 of 2016 (M/s.Agrocorp International Pvt.Ltd. vs. Union of India, New Delhi and others). The Division Bench while dealing with the similar issue had an occasion to deal with sub-section (3) of section 30 of the Customs Act,1962. In paragraph 8 of the Judgment, the Division Bench observed that the Authorities cannot refuse to consider the application for

modification of the IGM only because there was an allegation of a wrongful act or there was protest raised. The Division Bench held that the Customs Officer cannot go into this arena as these issues can be resolved only by a Civil Court. Therefore, a direction was issued to the Authority to consider the application for amendment subject to certain conditions.

4 In our view, the present petition also deserves to be disposed of in terms of the Judgment and Order dated 20th December 2016.

5 Accordingly, we pass the following order:

(I) We direct the concerned Authority empowered to consider the application made by the petitioner for amendment in IGM to decide the application made by the petitioner for amendment or substitution to the IGM subject to condition of the petitioner executing indemnity bond in favour of the Authorities indemnifying them of the claims and protests raised by the private parties regarding subject goods;

(II) Upon such an indemnity bond being executed and furnished by the petitioner, the concerned Authority shall pass appropriate order as expeditiously as possible and in any event within a period of one week from the date on which indemnity bond is furnished by the petitioner;

(III) We make it clear that the remedies available to the respondent No.4 are kept open and all contentions of the parties in that behalf are kept open;

(IV) All concerned to act upon an authenticated copy of this order.

(A.K.MENON,J.)

(A.S.OKA,J.)