

Mr. Indu Bhushan	}	Petitioner
versus		
The Union of India and Ors.	}	Respondents

Ms. P. S.Cardozo for respondent nos. 2
and 3.

DATE :- FEBRUARY 21, 2018

1. The petitioner in this petition has sought the following relief:-

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2. On such a petition, we had, upon hearing Mr. Shah appearing for the petitioner and Ms. Cardozo appearing for respondent nos. 2 and 3 passed the following order:-

“1. Ms. Cardozo tenders an affidavit in reply. It is taken on record. A copy is provided to the petitioner's Advocate in Court.

2. Mr. Shah appearing for the petitioner states that though those notices have been sent by registered post acknowledgment due to respondent Nos. 4 and 5, an attempt would be made additionally to serve them personally before the next date.

3. Mr. Shah would submit that an order that he is seeking will not prejudice the rights of even respondent Nos. 4 and 5 and that of the petitioner as also these can be balanced by an order on par with the one passed by this Court in Writ Petition No. 2843 of 2016 {**Agrocorp International Pte. Ltd. Vs. Union of India**}, decided on 20-12-2016 and reported in 2017 (349) E. L. T. 34 (Bom.).

4. Stand over to **21-2-2018**. To be listed on the supplementary board.”

3. The matter was listed today. At today's hearing, Mr. Shah tenders an affidavit proving service of writ petition upon respondent nos. 4 and 5 by Registered Post Acknowledgment Due and by e-mail. Mr. Shah also tenders an affidavit seeking to prove that the papers were carried by a representative of the petitioner's advocate to the residential/business address of respondent nos. 4 and 5, but they could not be accessed and approached.

4. Thus, though respondent nos. 4 and 5 have not accepted the packets, in pursuance of the two affidavits, we are satisfied that they had indeed received the packets or were aware of the filing of the instant petition and its date of hearing.

5. Respondent nos. 2 and 3 have stated on affidavit that they acted in terms of the circular, details of which are set out in the affidavit in para 7. A copy of that circular is also annexed. We are aware of the existence of such a circular (Exhibit 'A' to the petition). However, we find that there is a refusal of the no-objection certificate by respondent nos. 4 and 5 styled as the first assignees, whereas, the petitioner is contending that the Import General Manifest be amended to include his name/substitute it by deletion of respondent nos. 4 and 5.

6. Mr. Shah, in our opinion, rightly relies upon the order passed on 20th December, 2016 in Writ Petition No. 2843 of 2016 by this court. The judgment is reported in **2017 (349) E.L.T.34.**

7. In the light of the said judgment and by sufficiently protecting the interest of respondent nos. 2 and 3, we pass the following order:-

- (i) As a result of the above discussion, we direct the concerned authority to consider the application for

amendment or substitution to the Import General Manifest, provided, the petitioner executes an indemnity bond in favour of the authorities indemnifying them of the claims and protests raised by the private parties regarding the goods in question. Upon such an indemnity being executed and furnished, necessary orders be passed as expeditiously as possible and within a period of one week from the date of receipt of such indemnity.

(ii) While we dispose of the writ petition, we clarify that we have expressed no opinion on the rival contentions, particularly, based on the stand of respondent nos. 4 and 5. They can avail of such remedies as are permissible in law and our order and direction to the Commissioner of Customs shall not preclude them from doing so. They can proceed and the competent court can pass such orders as are permissible in law.

8. With the aforesaid directions, the writ petition is disposed of.

(SMT. BHARATI H. DANGRE, J.)

(S.C.DHARMADHIKARI, J.)