IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7157 OF 2018

Syed Rehmat Pasha
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Date: 2018.07.11 14:49:45 +0530

Glencore Agriculture India Pvt. Ltd.]
A company incorporated under the]
Companies Act, 1956, having its registered]
office at 4th Floor, Unit B, Cnergy,]
Appasaheb Marathe Marg, Prabhadevi,]
Mumbai – 400 026.] ... Petitioner

Versus

1 The Union of India, though the Secretary]
Ministry of Finance, Department of]
Revenue, North Block,New Delhi-110001]

2 The Commissioner of Customs (General)]
Import Noting Section, having his office at]
Jawaharlal Nehru Custom House,]
Nhava Sheva, Tal-Uran, Dist.-Raigad]

3 Assistant Commissioner of Customs,]
Import Noting Section, having its office at]
Jawaharlal Nehru Custom House,]
Nhava Sheva, Tal-Uran, Dist.-Raigad]

4 Mayfair Trading Company, No.321, Arcot]
Road, Vadapalaani, Chennai, Tamil Nadu] ... Respondents

Mr. V. Sridharan, senior counsel with Mr. Prakash Shah and Ms. Lakshmi Menon i/b PDS Legal for the Petitioner.

Mr. Pradeep S. Jetly for the Respondent-Union.

CORAM : S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

MONDAY, 09TH JULY, 2018

ORAL JUDGMENT : *[Per S.C. Dharmadhikari, J.]*

1 We have heard both sides.

2 With their assistance, we have perused the writ petition and the annexures thereto.

3 By a short order, this writ petition can be disposed of finally. Prayer clause (a) of the writ petition reads as under:

> *"(a) that this Hon'ble Court be pleased to issue a Writ of Mandamus or writ in nature of Mandamus or any other appropriate writ, order or direction, directing the Respondent Nos.2 and 3 by themselves, their subordinates, officers, servants and agents to forthwith (i) allow the Petitioner's Application dated 30.04.2018 for amendment of the Import General Manifest No.2190063 Line 1142 and 1143 dated 16.03.2018 under Section 30 of the Customs Act, 1962, to substitute the name of the Petitioner as the Importer and (ii) permit the Petitioner to file Bill of Entry and allow clearance of the goods."*

4 The petitioner is in the business of agricultural commodity handling, processing and marketing. The petitioner is

a regular importer and trades in grains, pulses and vegetables. A Bill of lading was presented by the petitioner dated 3rd February, 2018, Exhibit-A1 with the respondent No.4 as a notified party.

5 On arrival of the cargo, the agent of the Shipping Line filed Import General Manifest (for short "IGM") dated 16th March, 2018, for the goods on-board the vessel. The consignment covered by the above Bill of lading was mentioned at Line Nos.1142 and 1143 of the IGM. In the IGM, the fourth respondent's name was mentioned as the importer in view of the fact that it was the notified party.

6 The goods belonged to another party whose details are set out in paragraph 8 of the petition and at their request , the name of respondent No.4 was notified. On the arrival of the goods / consignment on 18th March, 2018, the fourth respondent refused to take delivery of the cargo. All efforts were made to contact the fourth respondent, but there has been no response. Even the principals did not take the requisite steps, namely, to remit the price and that is why the consignor exercised the right as an unpaid seller and resold the imported lentils to the petitioner

under the contract dated 29th March, 2018, copies of which are Exhibit B-1 and B-2. There is a commercial invoice also issued. There were fresh bills of lading issued, copies of which are Exhibits D-1 and D-2. With all these documents in possession, the petitioner approached the respondent by an application in writing seeking modification to the IGM so as to include the name of the petitioner.

7 Since there was no action taken but the petitioner was informed to obtain a No Objection Certificate from the fourth respondent, which in the circumstances aforestated, the petitioner says is untraceable, that this writ petition with the above prayer.

8 Mr. Jetly, learned advocate appearing for the respondents relied on section 30 of the Customs Act, 1960, to urge that precisely to deal with the situations of the present nature, the law has been clarified and in that regard, he relies upon sub-sections (2) and (3) of section 30 and a Circular. The Circular, copy of which is also compiled for our benefit by the petitioner, *inter-alia*, says that in cases of this nature, the request

for modification or amendment to the IGM has to be dealt with but strictly in terms therewith.

9 We have perused this Circular as well. It may have been issued post several orders passed by this Court in the past. However, when the proper officer mechanically insists to obtain an NOC without the satisfaction being recorded as necessitated by sub-section (3) of section 30, then, very often parties like the petitioner are left with with no alternate, but to approach this Court. In fact, the Circular deals with such a situation and says that only when there is major amendment involving fraudulent intention or substantial revenue implication that the strict insistence on sub-section (3) of section 30. Else, all amendment applications ought to be disposed of expeditiously and without inconveniencing parties like the petitioner. More so, when they are ready and willing to indemnify the respondents against any claims being lodged or raised by the fourth respondent in this petition. It is precisely that course which we have been consistently following and the order passed in Writ Petition No.4687 of 2016 dated 25th April, 2016 and 22nd November, 2016 in Writ Petition No. 12846 of 2016 can safely be followed. We,

therefore, direct as under :

The petitioner will indemnify the Customs against the claim, if any, raised by any third party. On this being done, the IGM be amended as prayed.

10 The Writ Petition is allowed in the above terms with no order as to costs. At the request of the petitioner's senior counsel, we grant time of ten days to furnish the indemnity.

SMT. BHARATI H. DANGRE, J. ***S.C. DHARMADHIKARI, J.***