

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11551 OF 2024

M/s. Shreeji Trading,
Through its Authorised Signatory
Smt. Rinaben Nirajbhai Shah

...Petitioner

Versus

Union of India,
Through its Secretary Minsitry of
Finance Dept. of Revenue & Ors.

...Respondents

Mr. Kamlesh R. Tiwari a/w. Mr. Shivam P. Mishra for Petitioner.
Mr. Karan Adik a/w. Ms. Sangeeta Yadav for Respondents.

CORAM : K. R. SHRIRAM,
JITENDRA JAIN, J.J.

DATED : 23rd AUGUST 2024

PC.

1. By consent of the Counsels, we took up this matter for final hearing, though there is no Affidavit-in-reply filed. Rule. Rule made returnable forthwith.

2. Mr. Tiwari states that Respondent No.6 sold a consignment of Soyabeans to Respondent Nos.4 and 5. As Respondent Nos.4 and 5 did not make the payments on time, the same goods, while in transit, were sold to Petitioner. The payment terms to Petitioner were 100% D/P at sight through the Bank of buyers. The said goods stuffed into 10X20

FCL containers were shipped on 16th February 2024 from the port of Apapa for discharge at Jawaharlal Nehru Port, Nhava Sheva. The shipment is evidenced by a Bill of Lading bearing No.234460820 dated 16th May 2024. Since the goods arrived at the port of Nhava Sheva before the contract between Respondent No.6 and Petitioner was entered into, the Import General Manifest (IGM) was filed by the shipping line showing Respondent No.5 as consignee. Now that the consignee has changed the provisions of Customs Act, 1962 requires that the IGM has to be amended. The shipping line has no problem to amend the IGM because it has issued a Bill of Lading dated 16th May 2024 in which the shipper is shown as Bagaa Commodities Sarlu, Niamey, Nigeria and the consignee is to order. The notified party is Petitioner. Mr. Tiwari tenders a copy of Bill of Lading in which there are endorsements on the reserve by Kotak Mahindra Bank Limited in favour of Petitioner, by shipper and also Petitioner herein. The Bill of Lading, for ease of reference is reproduced below:-

 MAERSK Shipper (As principal, where "care of", "c/o", or other variants used.) BAGAA COMMODITIES SARLU, NIAMEY, NIGER. ON ACCOUNT OF BK AGRO INTERNATIONAL LIMITED, NIGERIA.		BILL OF LADING FOR OCEAN TRANSPORT OR MULTIMODAL TRANSPORT		SCAC MAEU B/L No. 234460820
		Booking No. 234460820		Svc Contract 299312374
Consignee (negotiable only if consigned "to order", "to order of" a named Person or "to order of bearer") To Order		Export references		Onward inland routing (Not part of Carriage as defined in clause 1. For account and risk of Merchant)
		Notify Party (see clause 22) SHREEJI TRADING, BLOCK NO.2/11, APMC MARKET YARD DAHOD 389151 (GUJARAT) INDIA IEC: 3413002210 GSTN NO: 24ATGPS7293G1Z9 FSSAI NO: 10016021002050 PAN: ATGPS7293G EMAIL: NILANKSHAH01@GMAIL.COM <NILANKSHAH01@GMAIL.COM		

Vessel (see clause 1 + 19) CMA CGM KRIBI	Voyage No. 405E	Place of Receipt. Applicable only when document used as Multimodal Transport B/L. (see clause 1)			
Port of Loading Apapa	Port of Discharge Jawaharlal Nehru	Place of Delivery. Applicable only when document used as Multimodal Transport B/L. (see clause 1)			

PARTICULARS FURNISHED BY SHIPPER																																																																	
Kind of Packages; Description of goods; Marks and Numbers; Container No./Seal No.				Weight	Measurement																																																												
10 containers said to contain 4589 BAGS				229339.000 KGS	332.0000 CBM																																																												
10X20FT CONTAINERS SAID TO CONTAIN 4589 BAGS OF SOYA BEAN (NON-GMO) NEW CROP OF 2023 NIGER ORIGIN																																																																	
G/WT: 229.339 MTS N/WT: 228.88 MTS H.S CODE:12019000 NXP : XG202300232100295																																																																	
BAGS																																																																	
<table border="1"> <tr> <td>HASU1188970</td> <td>ML-NG2327117</td> <td>20 DRY 8'6</td> <td>460 BAGS</td> <td>23007.000 KGS</td> <td>33.2000 CBM</td> </tr> <tr> <td>MSKU7989213</td> <td>ML-NG2324681</td> <td>20 DRY 8'6</td> <td>457 BAGS</td> <td>22848.000 KGS</td> <td>33.2000 CBM</td> </tr> <tr> <td>SUDU1646268</td> <td>ML-NG2325966</td> <td>20 DRY 8'6</td> <td>460 BAGS</td> <td>23011.000 KGS</td> <td>33.2000 CBM</td> </tr> <tr> <td>MSKU7022898</td> <td>ML-NG2325967</td> <td>20 DRY 8'6</td> <td>460 BAGS</td> <td>23001.000 KGS</td> <td>33.2000 CBM</td> </tr> <tr> <td>MSKU3569017</td> <td>ML-NG2325970</td> <td>20 DRY 8'6</td> <td>460 BAGS</td> <td>23013.000 KGS</td> <td>33.2000 CBM</td> </tr> <tr> <td>BSIU2465853</td> <td>ML-NG2334775</td> <td>20 DRY 8'6</td> <td>453 BAGS</td> <td>22652.000 KGS</td> <td>33.2000 CBM</td> </tr> <tr> <td>MSKU5836982</td> <td>ML-NG2327118</td> <td>20 DRY 8'6</td> <td>460 BAGS</td> <td>23003.000 KGS</td> <td>33.2000 CBM</td> </tr> <tr> <td>MSKU7346032</td> <td>ML-NG2325969</td> <td>20 DRY 8'6</td> <td>459 BAGS</td> <td>22912.000 KGS</td> <td>33.2000 CBM</td> </tr> <tr> <td>PONU0393069</td> <td>ML-NG2334736</td> <td>20 DRY 8'6</td> <td>460 BAGS</td> <td>22946.000 KGS</td> <td>33.2000 CBM</td> </tr> <tr> <td>MSKU7807005</td> <td>ML-NG2334737</td> <td>20 DRY 8'6</td> <td>460 BAGS</td> <td>22946.000 KGS</td> <td>33.2000 CBM</td> </tr> </table>						HASU1188970	ML-NG2327117	20 DRY 8'6	460 BAGS	23007.000 KGS	33.2000 CBM	MSKU7989213	ML-NG2324681	20 DRY 8'6	457 BAGS	22848.000 KGS	33.2000 CBM	SUDU1646268	ML-NG2325966	20 DRY 8'6	460 BAGS	23011.000 KGS	33.2000 CBM	MSKU7022898	ML-NG2325967	20 DRY 8'6	460 BAGS	23001.000 KGS	33.2000 CBM	MSKU3569017	ML-NG2325970	20 DRY 8'6	460 BAGS	23013.000 KGS	33.2000 CBM	BSIU2465853	ML-NG2334775	20 DRY 8'6	453 BAGS	22652.000 KGS	33.2000 CBM	MSKU5836982	ML-NG2327118	20 DRY 8'6	460 BAGS	23003.000 KGS	33.2000 CBM	MSKU7346032	ML-NG2325969	20 DRY 8'6	459 BAGS	22912.000 KGS	33.2000 CBM	PONU0393069	ML-NG2334736	20 DRY 8'6	460 BAGS	22946.000 KGS	33.2000 CBM	MSKU7807005	ML-NG2334737	20 DRY 8'6	460 BAGS	22946.000 KGS	33.2000 CBM
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SHIPPER'S LOAD, STOW, WEIGHT AND COUNT																																																																	

Above particulars as declared by Shipper, but without responsibility of or representation by Carrier (see clause 14)					
Freight & Charges	Rate	Unit	Currency	Prepaid	Collect

Carrier's Receipt (see clause 1 and 14). Total number of containers or packages received by Carrier. 10 containers	Place of Issue of B/L Lagos	SHIPPED, as far as ascertained by reasonable means of checking, in apparent good order and condition unless otherwise stated herein, the total number or quantity of Containers or other packages or units installed in the so-called "Carrier's Receipt" for carriage from the Port of Loading (or the Place of Receipt, if mentioned above) to the Port of Discharge (or the Place of Delivery, if mentioned above), such carriage being always subject to the terms, rights, defenses, provisions, conditions, exceptions, limitations, and liabilities hereof (INCLUDING ALL THOSE TERMS AND CONDITIONS ON THE REVERSE HERETO NUMBERED 1-36 AND THOSE TERMS AND CONDITIONS CONTAINED IN THE CARRIER'S APPLICABLE TARIFF) and the Merchant's attention is drawn in particular to the Carrier's liability in respect of on deck stowage (see clause 15) and the carrying vessel (see clause 19). Where the bill of lading is non-negotiable the Carrier may give delivery of the goods to the named consignee upon reasonable proof of identity and without requiring surrender of an original bill of lading. Where the bill of lading is negotiable, the Merchant is obliged to surrender one original, duly endorsed, in exchange for the Goods. The Carrier accepts as Bill of Lading, and is responsible to check that any such document which the Merchant surrenders as a bill of lading is genuine and original. If the Carrier complies with this duty, it will be entitled to deliver the Goods against what it reasonably believes to be a genuine and original bill of lading, such delivery discharging the Carrier's delivery obligations. In accepting this bill of lading, any local customs or privileges to the contrary notwithstanding, the Merchant agrees to be bound by all Terms and Conditions stated herein whether written, printed, stamped or incorporated on the back or reverse side hereof, as fully as if they were all signed by the Merchant. IN WITNESS WHEREOF the number of original Bills of Lading, stated on this side have been signed and whenever one original Bill of Lading has been surrendered any others shall be void.
Number & Sequence of Original B(s)/L 3/THREE	Date of Issue of B/L 2024-05-16	
Declared Value (see clause 7.3)	Shipped on Board Date (Local Time) 2024-02-16	

Signed for the Carrier Matsuk A/S

(As Agent)

This transport document has one or more numbered pages

2022 Msk-A1 004915623

3. This petition has been filed alleging that Appraising officer, i.e., Respondent Nos.2/3 is insisting on "No Objection Certificate" (NOC) from Respondent No.5, who is originally shown as consignee in the IGM. Mr. Tiwari states that Respondent No.5 is no more concerned with the goods and when the shipping line itself has issued a Bill of Lading endorsed in favour of Petitioner, the question of Respondent Nos.2/3 insisting on NOC from Respondent No.5 does not arise. To the petition

is annexed (Exhibit-I) copies of the NOC from the shipping line addressed to the Assistant Commissioner of Customs giving no objection to amend the IGM. Mr. Tiwari states that the Bill of Lading, copy whereof is annexed at Exhibit-D to the petition showing Respondent No.5 as the notified party and showing the date of issuance of Bill of Lading as 6th March 2024 has been surrendered to the shipping line and copy of the new Bill of Lading, referred to earlier, is also annexed at Exhibit-K to the petition.

4. Mr. Adik on instructions states that if Petitioner complies with the procedure prescribed in paragraph 3(c) and (e) of Customs Circular No.14/2017-Customs dated 11th April 2017, the department will allow amending the IGM relying on the NOC issued by the shipping line. Mr. Adik states that the documents to be submitted can be found at Item No.18 of the annexure to the circular and the same reads as under:-

Sr. No.	Amendment Type (Major)	Tick the appropriate	Documents required
18	Changing the Importer's/Consignee name		. Bill of Lading both primary and Revised (Original/Attested by Shipping Line) . Letter from Shipping Agent/Line stating grounds on which request is made . NOC from 1st Consignee/2nd Consignee with IEC copy in the case of non-negotiable/non-transferable Bill of Lading. . Explanation Letter from 1st Consignee with IEC copy. . Letter from Supplier/Shipper/Shipping line/

			Overseas Counterpart of Shipping Line as the case may be.
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5. Mr. Tiwari points out that the NOC from the consignee cannot be insisted because what Petitioner has is a negotiable/transferable Bill of Lading and not non-negotiable/non-transferable Bill of Lading and in view thereof, no NOC is required from Respondent No.5. On the face of it, the Bill of Lading does appear to be not non-negotiable/non-transferable Bill of Lading. The shipping line may issue a certificate to this extent addressed to the Customs.

6. In view thereof, in our opinion, explanation letter from first consignee with IEC copy is also not required.

7. A similar matter had come up before a Coordinate Bench of this Court being Writ Petition No.8878 of 2017 in ***ETG Agri India Pvt. Ltd. Vs. Union of India & Ors.***, which was disposed by an order dated 9th October 2017. Paragraph Nos.2 to 5 thereof read as under:-

“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 subsection (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.”

We respectfully would follow the directions given in paragraph 5 of the said order. Ordered accordingly.

8. We also make it clear that remedies of Respondent No.5, if any, are kept open and all contentions of the parties in that behalf are kept open.

9. Petition disposed.

[JITENDRA JAIN, J.]

[K. R. SHRIRAM, J.]