

**IN THE HIGH COURT OF SINDH AT KARACHI**

C. P. No.D-4612 of 2018

Present : Aqeel Ahmed Abbasi, and  
Mrs.Ashraf Jahan, JJ. \_

Date of hearing : 07.08.2018

Petitioner : M/s.Saiban International through  
Mr.Kashif Nazeer, Advocate.

Respondents : The Federation of Pakistan through  
Mr.Mir Hussain Abbasi, Asst. Attorney  
General.

The Collector of Customs and another  
through Mr.Khalid Rajpar, Advocate.

**JUDGMENT**

Mrs.Ashraf Jahan, J:- Through this petition, M/s.Saiban International has prayed as under:-

- 1) Direct the Respondent No.3 to allow the amendment for change of consignee name & address in the IGM forthwith as their actions are against the dictates of law, natural justice and the Constitution of Pakistan, 1973;
  - 2) Restrain the Respondents from taking any coercive action including blocking of the NTN/user-ID, of the Petitioner;
  - 3) Declare that the act of Respondents by refusing the amendment in IGM is illegal, malafide, void, unjust and tainted with ulterior motive and of no legal effect;
  - 4) Direct the Respondents to issue delay and detention certificate in respect of the consignments that are subject matter of this petition;
  - 5) Grant any other relief that this Hon'ble Court may deem fit and proper under the circumstances of the case.
2. The facts, as mentioned in the memo of petition, are that M/s.Shandong Yougshen Rubber Group of Companies Limited,

China offered the Petitioner two consignments of tyres due to withdrawal of original consignee M/s.W.T.A. Traders, Karachi, against whose name the consignments were originally shipped from China, vide Bills of Lading No.(i) 5240031701 dated 08.4.2018, and (ii) 7041855240 dated 13.3.2018. As the Petitioner was the importer of same commodity, therefore, the same consignments were offered to him on same value, such offer was accepted and accordingly the amended bills of lading were issued by the shipping Company by changing the names/addresses to the present consignee M/s.Saiban International, Karachi. It is further the case of the Petitioner that the seller substituted all the required documents in the name of Petitioner and instructed the concerned shipping Company/agency to make necessary amendments in the Import General Manifest (IGM) to enable the Petitioner to proceed the matter for clearance of cargo after filing of GD and making due payment of all applicable duties and taxes. But surprisingly the Customs Authorities, without any legal justification refused verbally to accept the request for change in the name of consignee, though categorically it was brought the notice of the Respondents/Customs Authorities that Petitioner is a bona fide regular importer of tyres and tubes from M/s.Shandong Yougshen Rubber Group of Companies Limited. Even the old consignee M/s.W.T.A. Traders, Karachi also appeared before the Customs Authorities and extended no objection in favour of present Petitioner but the Customs Authorities refused to allow the change in IGM, hence this petition.

3. Notice of this petition was given to the Respondents, who filed their comments denying the case of Petitioner. As per their contention an inquiry/investigation has already been initiated against M/s.W.T.A. Traders for invasion of an amount of

Rs.27,053,575/= and a demand cum explanation Notice dated 30.6.2018 was issued against them, therefore, change of name from old consignee to M/s.Saiban International could not have been allowed. Thus, as a huge amount is recoverable from M/s.W.T.A. Traders, therefore, unless the aforementioned amount is paid request for change of consignee cannot be allowed.

4. It is contended by the learned Counsel for the Petitioner that refusal by the Respondents to amend the IGM of consignments, purchased by the Petitioner in respect whereof the Petitioner also possesses all ownership documents including, (i) original Bill of Lading, (ii) Certificate of Origin, Commercial Invoice/Packing List, etc. issued in the name of Petitioner i.e. M/s.Saiban International, is patently illegal, unlawful and against the consistent practice of Customs Department. Per learned Counsel, at this stage, when no goods declaration has as yet been filed, whereas, there is no dispute of ownership of subject consignment as previous consignee has not come forward to claim ownership, and the Petitioner is in possession of all original documents relating to ownership of the consignment, therefore, there is no bar in allowing the procedural amendment in the Import General Manifest i.e. change of name of consignee in terms of Section 45(2) of the Customs Act, 1969. According to learned Counsel for the Petitioner, the Petitioner has a bona fide case seeking amendment in the IGM on account of an obvious error and mistake, therefore, Respondents may be directed to allow such amendment in the IGM and, therefore, to process the GDs in accordance with law.

5. On the other hand, it is contended by the learned Counsel for the Respondents that proposed amendment in the IGM cannot be allowed as there are charges of evasion of duties and taxes against M/s.W.T.A. Traders (previous consignee), whose name appeared in

the original IGM as consignee, whereas, no valid reasons have been given by the Petitioner while seeking such amendment at a later stage. However, learned Counsel for the Respondent, while confronted to the legal position that such allegations or charges are against M/s.W.T.A. Traders and not against the present Petitioner, could not controvert such factual position nor could explain that in the absence of any charges against Petitioner in respect of subject consignment, how such request of seeking correction in the name of consignee can be refused in terms of Section 45(2) of the Customs Act, 1969.

6. We have carefully considered the contentions raised by the learned Counsel for the parties and also perused the material placed on record. It is an admitted fact that all the import documents including IGM, Bill of Lading, Commercial Invoice, Certificate of Origin and Packing List, etc. are in the name of Petitioner M/s.Saiban International, whereas, there is also written request from M/s.Shandong Yougshen Rubber Group of Companies Limited for the correction/amendment in name of consignee. It is also an admitted fact that such correspondence on behalf of Petitioner was made vide letter dated 14.5.2018, however, the Customs Authorities failed to pass appropriate order thereon in terms of Section 45(2) of the Customs Act, 1969. On the contrary, on the basis of a Show Cause Notice dated 30.6.2018 issued in the name of previous consignee M/s.W.T.A. Traders alleging evasion of duty and taxes, involving an amount of Rs.27,053,575/= the request for change of Consignee's name has been declined. It is settled legal proposition that no one can be punished or held responsible for the misdeed or wrong done by some other person, therefore, even if it is presumed that some inquiry or investigation is pending against the previous

consignee named in the IGM due to error or mistake, it cannot be made basis for refusal in change of IGM in favour of present consignee/Petitioner against whom there is no allegation of misdeclaration or evasion of duty and taxes, nor Respondents have been able to show any involvement of present Petitioner in respect of alleged inquiry/investigation pending against M/s.W.T.A. Traders (the previous consignee). It is pertinent to mention that import manifest is not a document of title, but it merely contains the particulars of goods imported and other particulars as prescribed by the Board from time to time, which includes the name of Consignee as well. There is no dispute regarding importability of goods nor it is a case of misdeclaration against the Petitioner M/s.Saiban International.

7. Reliance in this regard can be placed upon the case of Avia International v. Assistant Collector of Customs (2004 PTD 997), wherein, under similar circumstances, while examining the scope of Section 45(2) of the Customs Act, 1969, the Division Bench of this Court has been pleased to hold as under:-

*“ A perusal of the above provision shows that it empowers the appropriate officer to allow the correction of any obvious error in the import manifest or to rectify any omission which in the opinion of such officer results from accident or inadvertence. It is not a case of any omission but is a case of correction sought in the I.G.M. The law has provided for correction of any obvious error in the import manifest. An obvious error is an error which is plain and open and is plainly visible and evident. Now, if the I.G.M. sought to be amended is read with other import documents, Clarification Certificate of the supplier and N.O.C. of Messrs Classic Gift Centre the name of Messrs Classic Gift-Centre as consignee in the IGM can not be termed anything else but an obvious error with the result-that the amendment sought falls squarely within the purview of section 45(2) of the Customs Act. The line of demarcation drawn by the respondent No.1, in major and minor amendment is imaginary and such figment of imagination is not*

*warranted in law. While implementing a law the clear and plain language of the law is to be seen and nothing is to be added or subtracted. The golden principle of the interpretation of statute is that in the absence of any ambiguity the plain language of law and the words used in the enactment are to be considered and no additions, insertions or alternations are warranted in the language of law. We are of the considered opinion that, the respondent No.1 had travelled beyond the mandate of law in observing that the request of change of the consignee's name amounts to a major amendment which did not fall within the purview of section 45(2) of the Customs Act.*

*A perusal of the above provisions shows that the import manifest is not a document of title but it merely contains the particulars of the goods imported and other particulars as prescribed by the Board from time to time which include the name of consignee. Thus, it is clear that, so far the question of ownership of the goods is concerned it is not dependent on the entry on import manifest but on other import documents. The purpose of submission of the import manifest by the person in-charge of the conveyance is to ascertain the nature and particulars of the goods brought by the vessel in a particular customs station or customs airport as the case may be and to examine the same with reference to the entries in the Bill of Entry and other import, documents. Thus, if, all the import documents are in favour of a person while, the name of consignee is shown to be different in the I.G.M., it would not be a case of change of ownership but would a case of error/mistake, albeit subject to the surrounding circumstances in each case, which are to be examined objectively and not on extraneous considerations.”*

8. Further reliance can also be placed upon the case of Belal Mostafa Sadeqi Limited v. Deputy Collector of Customs and others (2015 PTD 761), wherein, it has been held as under:-

*“7. The amendment, if any, in the IGM is governed by the provisions of section 45(2) of the Customs Act, 1969 and it would be advantageous to refer to the provisions of section 45(2) of the Customs Act, 1969, which reads as under:--*

*"45(2) The appropriate office shall permit the person-in-charge of a conveyance or his duly authorized agent to correct any obvious error in the import manifest or to supply any*

*omission which in the opinion of such officer results from accident or inadvertence, by furnishing an amended or supplementary import manifest [or by making an amendment electronically] and shall levy thereon such fees as the Board from time to time directs. (Emphasis supplied)*

- (3) *Except as provided in subsection (2), no import manifest shall be amended.*

8. *From perusal of aforesaid provisions of section 45(2) of the Customs Act, 1969, it appears that appropriate officer shall permit the person-in-charge of a conveyance or his duly authorized agent to correct any obvious error in the import manifest or to supply any omission which in the opinion of such officer results from accident or inadvertence, by furnishing an amended or supplementary import manifest upon payment of such fee as may be prescribed by the Board from time to time. It is pertinent to mention that insofar as instant petition is concerned, it relates to an amendment in the manifest presented before the Customs authorities, whereas supplying for any omission is dealt with by filing of an additional or supplementary manifest, which is not the case here. The amendment can be requested by the Shipping Agent in respect of an obvious error or for supplying any addition in the IGM through filing of a supplementary manifest. However, there appears to be no restriction in this provision with regard to the question or qualification as to whether, what actually constitutes an "obvious error". The contention of the learned counsel for respondents Nos. 1 and 2 that since the amendment being sought in name of the consignee is not an error, hence the same has been regretted, in our view is misconceived as the law does not restrict any such amendment, if the same is otherwise justifiable on the basis of documents or mitigating circumstances of the case. Any generalized classification as to what amendment constitutes an "obvious error" or not, in our view would defeat the purpose of the provisions of section 45(2) of the Customs Act, 1969, which has been incorporated in the Act to take care of any such error on the part of the person filing the IGM of the Vessel. The intention and purpose of this provision is not to restrict, but to facilitate the trade with correction of errors and mistake. Therefore in our opinion, the contention raised on behalf of the respondents that neither the amendment requested on behalf of the petitioner is*

*an error, nor any plausible reason has been given by the petitioner, is misconceived and is hereby repelled.”*

9. So far as the inquiry/investigation against M/s.W.T.A. is concerned, the Respondents are empowered to take action against them in accordance with law, whereas, the Petitioner has also given an undertaking on the stamp paper on 14.5.2018 on the following terms of the effect that Petitioner will be liable to face the consequences, as may arise from the proposed amendment in IGM, but such ground cannot be made basis in respect of refusal in change of IGM in favour of present Petitioner:-

“TO,

*THE ASSISTANT/DEPUTY COLLECTOR OF CUSTOMS (MIS)  
IMPORT DEPARTMENT CUSTOM HOUSE  
KARACHI.*

*Subject: AMENDMENT OF CONSIGNEE NAME AND ADDRESS*

*Reference: VESSEL MALIAKOS V.1803 ETA: 18-04-2018 IGM NO.083 VIR NO.KAPW-0083-11042018 MB/L NO.COAU7041855240 INDEX NO.235.*

*Dear Sir,*

*In consideration of your allowing us to amend the under noted amendments we hereby guarantee to hold you, your heirs and assignees harmless from any or/all consequences that may arise by your granting such amendments including losses, damage, cost or any other expenses which you your heirs assignees may sustain or incur.*

<u>INSTEAD OF CONSIGNEE NAME &amp; ADDRESS</u>	<u>SHOULD BE CONSIGNEE NAME &amp; ADDRESS</u>
<i>W.T.A TRADERS PLOT GK-8 F-313 QASIM QRTS 3<sup>RD</sup> FLOOR HASSAN CHAMBER BOHRI ROAD OPP CUSTOM HOUSE KARACHI.</i>	<i>SAIBAAN INTERNATIONAL, OFFICE NO.423/A QASIMABAD LIAQUATABAD DAKH KHANA KARACHI</i>

*Also we do hereby solemnly undertake and confirmed that we shall be liable of all consequences if custom or any other authorities raised any objection, issue show cause notice to carrier impose fine/penalty in this regard.*

*Therefore, please proceed custom amendment of above revised HBL.*

*Your cooperation will be highly,*

*Thanking You,*

*Yours faithfully,*

*SAIBAAN INTERNATIONAL”*



10. In view of herein above facts and the legal position as emerged, we are of the opinion that request for amendment in IGM made on behalf of Petitioner is covered in terms of Section 45(2) of the Customs Act, 1969. Accordingly, instant petition was allowed by us vide our short order dated 07.8.2018 and these are the reasons in support thereof. Respondents are directed to allow the amendment in IGM and process the case of the Petitioner accordingly without drawing any adverse inference in this regard.

JUDGE

JUDGE

Karachi :

Dated: \_\_\_\_\_

Shakeel, PS