

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1940 of 2018

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For Orders on CMA No.14584/18 (if granted)
2. For Orders on CMA No.14585/18 (U/O 39 Rule 1 & 2 CPC)

16.10.2018.

Mr. Khalid Jawed Khan, Advocate for Plaintiff.

1. Granted.

2. This is a Suit for Declaration & Injunction. Learned Counsel for the Plaintiff submits that Plaintiff is the sole manufacturer of Polyvinyl Chloride (PVC) resin in Pakistan, which is used in the production of PVC Pipes. He submits that the Plaintiff is aggrieved by the unlawful and illegal import of Hazardous Plastic Scrap and Granules in violation of the Import Policy Order, 2016, as well as SRO No. 149(I)/2015 dated 19.02.2015 (Now part of Import Policy Order-2016 at Serial No.52 of Appendix-Bⁿ). Learned Counsel submits that earlier, Plaintiff had filed Suit No.47/2012 before this Court, and on 16.01.2012, by way of an interim measure, orders were passed, whereby, the Customs Department was restrained from releasing PVC Scrap containing Hazardous Waste in violation of the Import Policy Order 2009. Learned Counsel submits that thereafter from time to time the consignments imported by various parties, were subjected to Laboratory Test through Nazir of this Court from PCSIR, as and when they arrived. He has also referred to Order dated 25.04.2012. Learned Counsel submits that after certain litigation between Importers, Plaintiffs and concerned Departments, SRO No.149(I)/2015 dated 19.02.2015 was issued by the Ministry of Commerce, and in view of Para-(iii), thereof, such consignment of PVC Scrap / Granules could only be released on furnishing a Pre-Shipment Inspection Report originating from an exporting country by any of the Companies mentioned in Appendix-H to the Import Policy Order; whereas, the Companies were required to certify that consignments being exported to Pakistan does not contain any hazardous substance as defined in the Basel Convention. He submits that it has been further provided that Customs Authorities, in case of doubt, may randomly get any consignment tested through PCSIR Laboratory or any other

Government Certified Laboratory. According to the Learned Counsel this provision is once again been flouted / violated and the consignments are being released without strictly following this amendment / directions. He has referred to one Pre-shipment Inspection Certificate at Page-393 and submits that same has been issued without any Laboratory Test and only on the basis of visual inspection of the consignment. Learned Counsel submits that requisite Certification as required in law can only be done through a Laboratory Test and not by visual inspection. He further submits that the amendment, as above, also provides that Customs Authorities, in case of doubt, can also get any of the consignments tested; but the same is not being followed. Per learned Counsel, if the intention of the amendment had been to allow certification on the basis of visual inspection, then at the same time Customs authorities, would also have been authorized to do so, but this has not been provided consciously, as no visual inspection can make any such certification. Learned Counsel submits that such hazardous waste material is being used in the manufacture of household utensils and water pipes, which causes a serious concern. According to him the Plaintiff had approached various Institutes/Universities to give their opinion, that whether on visual inspection it could be determined that the material contains any hazardous substance or not, and according to such opinion(s) at pg:445-453, this is not possible without a proper test in the laboratory.

Let notice be issued to the Defendants for **06.11.2018**. Till the next date of hearing, the Defendants No.2 & 3 shall not release any consignment of PVC Scrap and Granules, on the basis of PSI Certificates which have been issued without Laboratory Test(s), and in that case, the Customs may have the goods tested from PCSIR as provided in Para-iii of SRO 149(I)/2015 dated 19.02.2015.

J U D G E

Ayaz P.S.