

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-1113 / 2013

Date	Order with signature of Judge
------	-------------------------------

- 1) For orders on Misc. No. 34930/2015.
- 2) For orders on Misc. No. 30223/2014.
- 3) For hearing of Misc. No. 22938/2013.
- 4) For hearing of Misc. No. 5077/2013.
- 5) For hearing of main case.

12.11.2015.

Ms. Ambar Lakhani Advocate for the Petitioner.
Mr. Asim Mansoor Khan DAG.
Ms. Afsheen Aman Advocate for respondent No. 2.
Mr. Agha Zafar Advocate for respondent No. 3.
Mr. Mansoor A. Shaikh Advocate for respondent No. 7.

Through instant petition the petitioner seeks declaration that the respondent No. 2's decision for destroying the cargo as described in annexure "A" to the instant petition is unlawful, malafide and unreasonable.

Counsel for petitioner contends that the petitioner is a freight forwarder and was engaged by respondent No.6, a Dubai based logistic contractor, to render services as a clearing agent as well as a freight forwarder in respect of NATO / ISAF forces cargo in Afghanistan. Counsel submits that due to an attack at Salala check post, transshipment of such cargo through Pakistan was temporarily suspended from 24.11.2011 onwards and during such period, 153 containers which are subject matter of instant petition, could not be transshipped to Afghanistan and are lying at Port. She further submits that respondent No.6 has abandoned the said cargo and has requested the Customs Authorities to destroy the same which has also been approved by the Customs Authorities, by which the petitioner is aggrieved, as respondent No.6 owes huge amounts of money in respect of services rendered, whereas the petitioner has a lien on such cargo. Counsel however, concedes that appropriate proceedings have also been initiated by the petitioner against respondent No.6 in foreign courts.

On the other hand, Counsel for respondent No.7 who owns the containers in question, submits that directions be issued for de-stuffing of the cargo from the containers so that the containers could be taken back by respondent No. 7, as it has no concern with the dispute in question, whereas, due to interim orders passed by this Court, everything is at a standstill, increasing the container rent on daily basis.

Counsel for respondent No. 3 KPT submits that this cargo can neither be auctioned nor destroyed at port as it is meant for transshipment to Afghanistan and has to

be re-exported, whereas, if it is ordered to be de-stuffed from the containers, it would not be possible for KPT to handle such loose cargo and would also cause great inconvenience.

We have heard all the Counsel and have perused the record. At the very outset we may observe that insofar as the dispute between the petitioner and respondent No.6 is concerned, the same is entirely of a private nature, pertaining to contractual obligations agreed upon between the parties, which cannot be adjudicated by this Court under its Constitutional jurisdiction. Moreover, we also wonder how the petitioner is claiming a lien on goods which the owner itself wants to have it destroyed for having expired and no more feasible for human consumption. In our view this Court perhaps was not properly assisted at the time of seeking interim orders, whereas, respondent No.7, the owner of containers was not even arrayed as a party initially and was joined on an application filed by it.

Be that as it may, insofar as the question of re-exporting the goods is concerned, since admittedly the owner / consignee of the goods i.e. respondent No.6 has itself not come forward for its re-export and has rather requested the Customs Authorities to destroy the same, therefore, the question of re-export does not arise. On the other hand, in our view if the cargo duly stuffed in the containers is retained at the Port any further, the same would not serve any useful purpose. The goods have been abandoned by the owner/shipper, and as informed being transshipment cargo, cannot be auctioned as well, and the only recourse available is its destruction as requested by respondent No.6, whereas, it appears that respondent No. 7 has been dragged into this controversy unnecessarily and appears to have been penalized by retention of its containers and the request for de-stuffing the containers and handing over them to respondent No.7 appears to be fair and justifiable.

In such circumstances, we while dismissing instant petition direct the Customs Authorities / KPT to immediately arrange for de-stuffing of the cargo from the containers, whereafter, the empty containers shall be handed over to respondent No.7, in accordance with the procedure in vogue. As to destruction of cargo, the Customs authorities may proceed in accordance with law and rules governing such destruction. Insofar as claims of private parties against each other, including that of respondent No.7 for unnecessary detention and piling up of container rent against the petitioner is concerned, the parties may seek remedy in that respect as provided under the law.

Petition stands dismissed.

J U D G E

J U D G E