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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3799/2014

HARI RAI & ORS.

..... Petitioners

Through: Mr. Rajesh Jain, Mr. Ramesh Johri and
Mr. Virag Tiwari, Advocates.

versus

COMMISSIONER OF TRADE & TAXES

..... Respondent

Through: Mr. Santosh Kumar Tripathi, Additional
Standing counsel for GNCTD.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

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12.02.2016

Dr. S. Muralidhar, J.:

1. This writ petition has been filed by nine Petitioners in rather unusual circumstances. Of the nine Petitioners, the first two are *thelawalas* (cart pullers) and the other seven have described themselves as '*Angadias*,' i.e., persons engaged in the business of arranging transportation of goods through road and rail.

2. The subject matter of the writ petition concerns the seizure by the Respondent, Commissioner of Trade and Taxes (CTT) in the Department of Trade and Taxes (DT&T) of 24 cartons containing gold and silver jewellery as well as cash worth nearly Rs. 4 crores found loaded on two *thelas* (goods carts)

at around 10.30 am on 1st March 2014 from the railway parcel van of the Ahmedabad Express which arrived at the Old Delhi Railway Station. According to the Petitioners, the said 24 cartons were meant for delivery to the seven *Angadias* (Petitioners 3 to 9) having been despatched by some parties in Gujarat.

3. The 24 cartons found loaded on the two *thelas* of Petitioners 1 and 2, were seized by the Respondent, by issuing two Goods Detention Orders ('GDOs') dated 1st March 2014. The grievance of the Petitioner is that the GDOs do not disclose the number of cartons seized. Further, according to them, the seizure also did not take place in accordance with the law and the procedure envisaged under the Delhi Value Added Tax Act, 2004 (DVAT Act). According to the Petitioner, after their seizure on 1st March 2014, the 24 cartoons were loaded on a tempo and taken to the Power House, Ring Road godown of the Respondent. It is stated that the Petitioners 3 to 9 then approached the DT&T but were not permitted to even have a look at the goods. It is stated that the goods were next moved to Vyapar Bhawan, Indraprastha Estate. An inventory was stated to have prepared of the goods on 11th March 2014, during which the Petitioners were not asked to participate. It is stated that on 18th April 2014 one M/s Shaswat Jewels (P) Ltd. whose goods were purportedly carried by Bharat Kumar Praveen Kumar & Co., i.e., Petitioner No.9, made a request for release of the goods by furnishing the relevant documents like registration certificate of the dealers in Gujarat who had dispatched the goods and the dealer in Dealer in Delhi who was to receive such goods. But this was not responded to.

4. It appears that on 9th/10th May 2014, some of the seized goods kept at 13th floor of the Vyapar Bhawan in the custody of the Respondent was stolen. This

led to registration of FIR No. 183 of 2014 under Sections 454 and 380 of the Indian Penal Code ('IPC') at Indraprastha Estate Police Station.

5. On 16th May 2014, the seven *Angadias* along with one 'Nippon Gold' made a joint representation to the Joint Commissioner, Department of Trade and Taxes to release the goods to them and also compensate them for the goods that were stolen. It is stated that with this letter the booking receipts, inventory of goods with items and value thereof and copies of the bills were enclosed. This was followed by a letter sent on their behalf by their counsel to the Joint Commissioner on 20th May 2014, requesting for inspection of the file and to be provided with copies of the inventory prepared on the first stage on 1st March 2014 and on the second stage on 11th March 2014. The Petitioners also sought copies of the statements recorded of the persons by the DT&T during or after the seizure and statements given to the police while lodging the aforementioned FIR including the copy thereof. A request was also made by the Petitioners to take stock of the inventory lying with the DT&T to satisfy themselves that those goods were seized on 1st March 2014.

6. An order dated 20th May 2014, passed by the Assistant Commissioner, Enforcement-II Branch of the DT&T, declining the application dated 16th May 2014 by the Petitioners for release of the goods and to compensate the Petitioners as regards the stolen goods. Thereafter the present petition was filed praying that the Court should summon the entire record relating to the seizure, quash the GDOs dated 1st March 2014 and the order dated 20th May 2014 declining the Petitioners' application for release of the goods.

7. On 8th July 2014 while directing notice in this writ petition, the Court called for an affidavit of the officers who effected the seizure including the inventory

containing the description of the articles.

8. A counter affidavit has been filed by Mr. V.S. Rawat, Special Commissioner (L&J) with the DTT on 30th August 2014. It was, *inter alia*, stated therein that on 1st March 2014, the survey team of the DT&T found some *thela* pullers outside the Old Delhi Railway Station carrying some goods and when they could not answer a single question or produce the required documents, the 24 cartons found on the two *thelas* were seized under Sections 59 and 61 of the DVAT Act. The two GDOs dated 1st March 2014 were issued. It is stated that initially one Mr. Raj Kumar, claiming to be the owner of the goods, filed an application on 3rd March 2014 for their release. He, however, failed to turn up when asked to furnish the necessary documents along with an affidavit showing the proof of ownership of the goods.

9. The counter affidavit proceeds to state that on 5th March 2014, a Committee was constituted with the approval of the Commissioner, DTT for making an inventory of the detained goods. It is further stated that on 5th, 6th and 8th March 2014, the police was contacted to provide security for the detained goods. It is stated that normally the Department does not deposit the seized goods with the government treasury “as it is the vehicles along with the goods” which are detained. Since the consignment detained on 1st March 2014 contained expensive items, it was decided to store the goods in a room attached to the conference hall at the 13th floor of Vyapar Bhawan as a strong room. Security guards were stationed there under intimation to the police. It is claimed that an inventory was prepared bundle-wise in order to avoid any mixing up of the materials and the proceedings were videographed to ensure transparency.

10. The counter affidavit states that the Petitioners failed to furnish the

supporting bills but only gave a list of the articles claimed. The Petitioners were asked to furnish proof of ownership of the goods but failed to do so. It is stated that it is the CTT who is empowered to release the goods and he has to be satisfied that the claims made are genuine. It is also pointed out that the question as to whether any of the Petitioners are in fact genuine owners of the goods seized is a disputed question which cannot be decided in the present writ petition.

11. At the hearing on 10th July 2015, the Court required the Respondent to file a detailed affidavit indicating “as to how and in what circumstances the seized goods disappeared/were stolen from their custody and who has been held responsible for the same and whether any action has been taken or nor”.

12. Pursuant to the above order, a further affidavit was filed by one Mr. D.K. Mishra, Special Commissioner (L&J) on 31st August 2015 in which, *inter alia*, it was stated that “as this was first case of its kind in the recent past, the Department was ill equipped to deal with the situation” and that despite best efforts “because of non existing support system and lack of infrastructure made the detailed goods unsafe and unfortunately part of the detained goods were stolen on 10.5.2014 for which an FIR No. 183/2014 in I.P. Estate Police Station has also been registered”. It was further stated that one Joint Commissioner, two Assistant Commissioners, two VAT Inspectors and one class IV employee were placed under suspension on 13th June 2014. An administrative enquiry was ordered by the Government of NCT of Delhi and the enquiry officer submitted her report on 25th August 2014.

13. The additional affidavit of the DT&T also adverted to the practice adopted when a search is conducted on a vehicle. The goods are matched with the

records available with the vehicle-in-charge. Normally the enforcement team detains the goods or the goods carrying vehicle by issuing a detention order. The goods are not immediately seized. In the present case the checking team detained the goods and the two *thelas* and took them to a special parking space. It is stated that “the *thela* pullers and pushers, who were in-charge of the goods, ran away and in such circumstances the burden of safety and security of the detained goods became the responsibility of the Department, which was the first such experience of the branch with such eventuality”.

14. At the hearing on 14th September 2015, some of the documents were handed over to the Court by the Respondent in a sealed cover. They were perused by the Court and ordered to be re-sealed and kept with the Registrar (Appellate). A notice was issued to the Deputy Commissioner of Police, Central District, Delhi to submit his report with regard to FIR No. 183 of 2014, on the next date of hearing.

15. On 12th October 2015, the Court perused the status report filed in a sealed cover. The Court observed:

“It portrays a very sorry state of affairs with regard to the seizure operations and the manner in which the goods have been lost on account of theft. Investigations are going on. However, we do not feel that the investigation is going on at the pace at which it should be conducted. A further status report with regard to the progress in the investigation be filed within two weeks from today”.

16. A further status report was filed before the Court on 16th November 2015 and 17th December 2015. Today a further status report has been filed. One of the Assistant Commissioners of the DT&T, who was involved in the seizure of the goods, has been arrested on 7th December 2015. His bail application is stated to have been dismissed by the concerned Court. It is further stated that

an application has been moved for narco analysis test of some of the suspects. Sanction to prosecute the arrested Assistant Commissioner has also been sought. The status report filed by the DCP, Crime Branch states that the investigation of the case is under progress.

17. The Court is satisfied that the necessary steps are being taken to carry the aforementioned FIR to its logical conclusion. The Court impresses upon the DCP, Crime Branch, and North Delhi, to expedite the completion of the investigation and file a charge sheet. The criminal case shall be pursued in accordance with law.

18. An earnest plea is made by Mr. Rajesh Jain, learned counsel for the Petitioners, that the Court should now direct release of the goods to the Petitioners. He submitted that it was incumbent upon the CTT under Section 63(2) (c) of the DVAT Act to return the goods which have been seized to the dealer or “other persons from whose custody or power they were seized”. Further, this should have already happened within one month from the date of the seizure.

19. The Court notices that under Section 64 (1) of the DVAT Act, if any person on being required by the CTT, fails to give any information in respect of any goods in his possession or fails to permit the inspection, the CTT may seize the goods in his custody or possession in respect of which the default is committed. Under Section 64(2) the seizure remains in force until it is revoked or the person concerned furnishes the information required or makes proper arrangements for the inspection of the goods, whichever occurs first.

20. A careful perusal of the writ petition reveals that it has a list of dates which,

in para 2 of the writ petition, is asked to be treated as part of the writ petition. The writ petition itself has only three paragraphs, followed by the grounds and documents. The version of the Petitioners has, therefore, to be gleaned only from the list of dates. Even according to the Petitioners, as stated in the list of dates, the Petitioners 1 and 2 were *thela* pullers from whom the goods were seized by the Assistant Commissioner, Enforcement-II on 1st March 2014. A specific query was posed to Mr. Rajesh Jain, to show from anywhere in the writ petition an averment that any of the *Angadias*, i.e., Petitioners 3 to 9 had accompanied the two *thelas* at the time when the goods were detained. There is not a single averment in the entire petition or even the rejoinder to that effect. Mr. Jain was then asked to show any averment to the effect that the *Angadias* had in their possession, at the relevant time, complete documents which could show ownership of the goods. There is not a single averment in that respect as well. What is stated, again from the list of dates i.e. 28th February 2014, is to the following effect:

“In each carton, *Angadias* would invariably place the documents which disclose the name of the consignor and the consignee, details of the goods like quantity, description and also the value of such goods. To make out as to which carton is of which *Angadia*, each carton would have a mark of the *Angadia*’s names in their short forms. Further the cartons would be tied or stitched with a rope which would be different in colour for each *Angadia*”.

21. Significantly, in respect of the goods which were detained on 1st March 2014, there is no averment that the detained cartons contained those documents.

22. It is then stated that along with the representation dated 20th May 2014, all the relevant documents were furnished. Significantly, while a copy of the said representation is placed on record, the documents accompanied such

representation are not enclosed. Even today, Mr. Jain has handed over across the Bar a table showing in columns the cartons corresponding to the Petitioners 3 to 9, with value of goods and their description. Mr. Jain asserts that even today the Petitioners 3 to 9 are prepared to furnish all the relevant documents to satisfy the Respondent about their ownership.

23. There are several questions that arise in the manner in which the Petitioners 3 to 9 have gone about their tasks as *angadias*. The Petitioners in list of dates stated that “*Angadias* in their normal course of business, transport the goods through Railways from one State to another and as carriers of goods, deliver the same to the respective parties whose details are available with them”. Why would the above system of transporting the goods through Railways be adopted for transporting valuable gold and silver jewellery as well as cash, which, according to the Petitioners, are valued at Rs.3,92,32,659 in the above manner is not clear. It seems extremely unusual that goods of the above description were being transported in the cartons, kept in a Railway van and were then loaded on to *thelas* of Petitioners 1 and 2, without being accompanied by any of the *angadias*.

24. From what appears from the pleadings and documents placed on record in these proceedings, it appears to the Court that this method of bringing in jewellery and cash is deployed regularly for quite some time now, obviously with help from some officials of the DT&T and even the police, and remained either undetected or allowed to continue. The provisions of the DVAT Act are being flouted with impunity since it seems extremely unlikely that such valuable consignment would be first despatched through a railway van and then transported on *thelas* openly without any protection through a busy locality of

Delhi in broad daylight.

25. Clearly the Respondent's enforcement team has not, prior to the incident on 1st March 2014, been performing its duty, or otherwise things would not have come to such a pass. The Respondent on its own admission appears to have no infrastructure to deal with such contingency where the goods valued at around Rs. 4 crores are required to be detained and kept in the custody of the DT&T. This is an unfortunate instance of the DT&T being unable to ensure the safety of the detained goods, resulting in some portion of it being stolen and a criminal case having to be registered in that behalf.

26. As far as the main prayer in the petition is concerned the Court is not inclined to order release of the goods at the present stage and in the circumstances narrated above to any of the Petitioners. As already noticed, Petitioners 1 and 2 are *thela* pullers and the question of releasing the goods that have been detained to either of them does not arise. In the absence of proper documentation in respect of the goods being produced to the satisfaction of the CTT, the order dated 20th May 2014 passed by the Assistant Commissioner cannot be faulted and does not call for interference.

27. Here the Court would like to observe that it would be incumbent upon the DT&T to unearth the complete facts as to how goods were despatched in the first place and from whom in Gujarat and what is the precise *modus operandi* adopted in despatching such valuable goods through railway vans and then through some *thelawalas* in Delhi. A further question which should be answered is why cash along with valuable jewellery (which was obviously uninsured) was being despatched in such a manner from one state to another. The DT&T should seek the assistance of and coordinate with the Reserve Bank

of India (RBI) to put in place regulatory and corrective measures to check the adoption of such *modus operandi* of transporting huge amounts of cash from one State to another.

28. The Petitioners have thus far not been able to satisfy this Court that they are entitled to the release of the detained goods or for any of the other reliefs as prayed in the present writ petition. In any event, the assertion of the Petitioners that the goods belong to them raises disputed questions of fact which this Court cannot possibly examine in this writ petition. That would be within the domain of the DT&T and correspondingly the responsibility of the Petitioners to satisfy the DT&T in that regard.

29. All that the Court can order at this stage is to direct the DT&T to examine the claim of the Petitioners for release of the goods and communicate to them a decision in that regard in accordance with law within eight weeks from their producing the complete documentation to the satisfaction of the DT&T. If the Petitioners are aggrieved by such decision it would be open to them to avail of appropriate remedies in accordance with law. Likewise, in regard to the stolen goods, the Petitioners are free to pursue the remedies available to them in accordance with law.

30. The documents placed in sealed covers, to the extent they concern the criminal investigation, shall be handed over by the Registry to Mr. Surender Dalal, Inspector, Crime Branch, Rohini, who is present in the Court, after obtaining appropriate acknowledgment. The other documents in sealed covers pertaining to the DT&T shall be handed over to any senior officer of the DT&T on his producing the necessary authorisation and the Registry will obtain an acknowledgment from the said officer.

31. The Crime Branch will pursue the investigation of aforementioned FIR to its logical end as expeditiously as feasible.

32. The writ petition is disposed of in the above terms with no order as to costs. A certified copy of this order be delivered by Special Messenger to the Respondent for compliance with the directions in para 27 of this order.

FEBRUARY 12, 2016
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S.MURALIDHAR, J

VIBHU BAKHRU, J

