

GAHC010120522017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/195/2017

RINTU BASTIAN
S/O. SRI BASTIAN MATHEW, R/O. FLAT NO. C-308, GAGAN APARTMENT,
KANAKLATA PATH, RUKMINIGAON, GUWAHATI-781022.

VERSUS

THE COMMISSIONER OF CUSTOMS PREV. N.E. REGION, SHILLONG and 5
ORS.
CUSTOM HOUSE, M.G. ROAD, SHILLONG, 793001 MEGHALAYA.

2:THE ADDL. COMMISSIONER OF CUSTOMS PREV.
NER REGION
SHILLONG

CUSTOM HOUSE
M.G. ROAD
SHILLONG
793001.

3:THE DY. COMMISSIONER OF CUSTOMS
GUWAHATI DIVISION
GUWAHATI

CUSTOM HOUSE
2ND FLOOR
NILOMANI PHUKAN PATH
CHRISTIAN BASTI
GUWAHATI -781005 ASSAM.

4:THE ASSISTANT COMMISSIONER OF CUSTOMS PREVENTIVE NER
REGION
SHILLONG

CUSTOM HOUSE
M.G. ROAD
SHILLONG -793001.

5:THE ASSISTANT COMMISSIONER OF CUSTOMS
GUWAHATI CUSTOM DIVISION

NILAMONI PHUKAN PATH
CHRISTIAN BASTI
GUWAHATI-5
ASSAM.

6:THE SUPERINTENDENT DISPOSAL

O/O. THE ASSISTANT COMMISSIONER OF CUSTOMS
GUWAHATI CUSTOMS DIVISION
NILAMONI PHUKAN PATH
CHRISTIAN BASTI
GUWAHATI-5
ASSAM

Advocate for the Petitioner : MR.R S MISHRA

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT & ORDER (ORAL)

Date : 22-11-2023

Heard Mr. D. Sahu, learned counsel for the petitioner and Mr. S.C. Keyal, learned counsel for the respondents in the Customs Department.

2. The petitioner is a trader in raw rubber which he procures from the small registered rubber growers in the Northeastern region and operates his business in the name and style of M/s Madona Agencies having its place of business at TRP Road, Machkhowa, Guwahati. In course of the business, there was a seizure under Section 110 of the Customs Act, 1962 (for short 'the Act of 1962')

by the Customs authorities in respect of 2840.87 kg of raw rubber and the estimated rubber value of the seized raw rubber was stated to be Rs. 5,68,174/- @ of Rs. 200/- per kg. The seizure under Section 110 of the Act of 1962 resulted in a confiscation under Section 105 of the Act of 1962 as per the order dated 28.03.2013 of the Additional Commissioner of Customs (Prev.), Shillong. Upon the seized goods being confiscated, they were subjected to an auction on 30.10.2014 and in the auction, the seized goods fetched a price of Rs. 1,45,000/-. Later on the seizure as well as the confiscation was set aside by the order dated 29.12.2014 in Order-in-appeal No. 76/CUS(A)/GHY/14 of the Commissioner (Appeal), Customs and Central Excise, Guwahati.

3. In the resultant circumstance, the petitioner claimed for a refund of the value of the goods that were seized and confiscated. The respondents in the Customs Department had offered the petitioner an amount of Rs. 1,55,000/- which includes the auction price of Rs. 1,45,000/- plus Rs. 10,000/- penalty that was earlier imposed. Being dissatisfied, the present writ petition is instituted with a claim that upon the seizure and the confiscation being set aside, the petitioner is entitled for a refund of the complete value of the goods and not the value as per the auction. Accordingly, reference is made to inventories of seized goods wherein the estimated value of the seized goods was stated to be Rs. 5,68,174/-.

4. In this respect, we take note of the order dated 23.05.2016 in WP(C) No. 3012/2016 of the Division Bench of this Court where the present petitioner was the petitioner therein and in that matter before the Division Bench, the same issue was raised by the petitioner that the estimated value of the seized goods was Rs. 5,68,174/- whereas the respondents in the Customs Department had sanctioned a refund amount of Rs. 1,55,000/-. In the order dated 23.05.2016 of

the Division Bench, a representation of the petitioner dated 21.08.2015 was taken note of which was pending before the Customs authorities and accordingly, a direction was issued to the Assistant Commissioner of Customs (Preventive), NER Region, Shillong, to decide the representation dated 21.08.2015.

5. Consequent thereof, the order impugned in the present writ petition dated 12.07.2016 was passed. While disposing of the representation of the petitioner dated 21.08.2015, the Deputy Commissioner (Hqrs. Prev) in the Customs Department took note that by the said representation, the petitioner had asked for refund of the seizure value of the goods instead of the auction sale proceeds of the goods which were seized. The Deputy Commissioner also took note of the aspect that after the seizure and confiscation of the goods inasmuch as, the seized goods were of perishable nature, the Department initiated a disposal of the goods through public auction. It was specifically taken note of that the writ petitioner Rintu Bastian was intimated about the auction by letter C.No. VIII(25)1/DISP/MISC/ACG/2012/5202 dated 10.09.2014 by the Superintendent (Disposal), Guwahati Customs Division, Guwahati and that the writ petitioner had received the letter on 18.09.2014 and thereafter on 30.10.2014, the goods were disposed of through public auction to the highest bidder @ Rs. 1,45,000/-. In the order of the Deputy Commissioner, it had been also put on record that the seized and confiscated goods were sold through public auction on 30.10.2014 by following the complete formalities and procedures as may be required to hold a public auction and further that it was also done with prior intimation to the writ petitioner. Accordingly, the order was passed that the value of the seized goods was generally assessed after considering various factors prevailing at the time, the place and the date of seizure, but the actual

value of the goods comes to light only when such goods are put to sale in the actual market. It took note of the aspect that the value of the goods was subjected to an assessment by the Government registered valuer who had valued the goods @ Rs. 50/- per kg and thereupon they were put up on auction to ensure that the auction price does not fetch a price less than the value determined by the Government registered valuer. The order also provides that as per Section 126 of the Act of 1962, that once the goods are confiscated, the ownership vests in the Central Government and therefore there is no infirmity in the goods being put up in a public auction. Further it was provided that the writ petitioner Rintu Bastian was duly intimated about the date and time of the auction that he had every opportunity to participate in the auction, but in his own volition he remained absent.

6. Mr. D. Sahu, learned counsel for the petitioner strenuously relies upon the order of seizure dated 24.05.2012 where the estimated value of the goods is stated to be Rs. 5,68,174/- @ Rs. 200/- per kg and claims that the estimated value stated therein itself is the determined value of the goods. Accordingly, reliance is placed upon a pronouncement of the Hon'ble Supreme Court rendered in *Northern Plastics Ltd. Vs. Collector of Customs and Central Excise*, reported in (2000) 1 SCC 545, wherein in paragraph 9 thereof it was held that the consequence of setting aside the order of confiscation on the ground that it was illegal, entitles the person concerned to the value of the goods as on the date or time when the goods ought to have been cleared by the authorities for home consumption which in other words would have to be understood to be the value of the goods on the date it was seized.

7. We see no reason to deviate from the aforesaid proposition laid down by the Hon'ble Supreme Court that upon seizure/confiscation of the goods being

declared to be illegal and is consequently set aside, the person concerned would be entitled to refund of the value of the goods as it stood on the date it was seized. However, what is noticeable in the facts and circumstances of the present matter is that in the matter before the Hon'ble Supreme Court, the question for consideration was whether upon the seizure and confiscation being set aside, the person concerned would be entitled to refund of the value of the goods. The circumstance of the matter before the Hon'ble Supreme Court was not whether the value of the goods as it stood on the day of the seizure would have to be refunded although the value of the goods may have been determined by auction that may have taken place between the date of seizure and the date when such seizure and confiscation were set aside.

8. As in the instant case, the goods concerned were put up on auction and there is a determined value of the goods as per the auction, unless the auction itself is assailed before any appropriate forum on its validity and correctness, it will be difficult to accept that as per the proposition laid down by the Hon'ble Supreme Court, which is a proposition in general that upon the confiscation of the goods being set aside by the competent authority, the owner of the goods would be entitled to a refund of the value of the goods and that the owner would be entitled to a refund on the value of the goods as on the date they were seized.

9. Be that as it may, even if we accept the submission of Mr. D. Sahu, learned counsel for the petitioner that the petitioner would be entitled to a refund of the value of the goods as it stood on the date of the seizure, further material would be required before the Court as to what was the value of the goods on the date it was seized and the only reference is made to the estimated value of the goods as mentioned in the order of seizure.

10. On the other hand, Mr. S.C. Keyal, learned counsel for the respondents in the Customs Department states that the estimated value is not a determined value after following the due procedure as may be required and it is only a tentative value which is only for carrying forward the process of seizure.

11. No material is placed by the petitioner before the Court to arrive at any conclusion that the estimated value stated in the order of seizure is also a determined value of the goods at the time of its seizure. As it is the petitioner who had procured the goods which were seized and confiscated and later on put up on auction, he would be the best person to have the knowledge about the actual value of the goods as it may have been. The same would also be in conformity with provision of Section 106 of the Indian Evidence Act, 1872. But as a dispute has been raised by the petitioner that he is entitled to the value of the goods as it stood on the date of seizure, the basic material to adjudicate the said issue would be what would be the value as may be determined as on the date when the goods were seized. In the absence of such material being available, it would be futile to decide the issue as to whether in a circumstance where the goods were sold by public auction, the petitioner would be entitled to a refund of the value of the goods as it stood on the day it was seized.

12. In the meantime, liberty is granted to the petitioner to assail the auction of the goods that may have been done by the respondents in the Customs Department as regards the valuation of the goods and we are clarifying that the liberty to challenge the auction would be confined to a challenge to the value of the goods as determined in the auction. Upon such challenge if any order acceptable in law is made by the respondents in the Customs Department on the valuation of the goods, further liberty would remain to the petitioner to approach again on the issue as to whether petitioner would be entitled to a

refund on the value of the goods as it stood on the day it was seized or the value of the goods as determined by the auction itself would attain its finality.

13. Writ petition stands disposed of as indicated above.

14. The records produced by Mr. S.C. Keyal, learned counsel for the respondents in the Customs Department are returned back.

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JUDGE

Comparing Assistant