IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4954 of 2015

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1. Ram Babu Prasad, S/o Late Shivdhari Mahto, resident of village-Basantpur, Barva Khurd, P.S.-Kundwa, Chainpur, Distt-East Champaran.

.... Petitioner/s

Versus

1. The Union of India through the Commissioner Customs, C.R. Building, B.C Patel Path, Patna
2. The Joint Commissioner Customs, C.R. Building, B.C Patel Path, Patna
3. The Superintendent Adjudication, C.R. Building, B.C Patel Path, Patna
4. The Inspector of Customs, Preventive, Customs, Hqrs. Patna, C.R. Building, B.C Patel Path, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shri Prakash Tiwari

For the Respondent/s : Mr. Sanjay Kumar(ASG)
Mrs. Archana Meenakshee

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 27-07-2015

Heard Mr. Tiwary for the petitioner and Mrs. Archana Meenakshee for the Customs Department.

A counter affidavit has been filed on behalf of the Customs Department. The petitioner has filed rejoinder thereto.

Dispute in the present case is the terms/conditions on which the vehicle, which admittedly belonged to the petitioner, could be released provisionally. It is the case of the petitioner that he owns a pick-up van bearing Registration No. BR-05G-7812. It was hired by someone for carrying goods. It was subsequently found that the vehicle of the petitioner was carrying bettle nuts and other articles of foreign origin. The Customs Department seized the vehicle and the articles laden thereon. The petitioner immediately approached the respondent Customs Department for provisional release of the vehicle in terms of provisions contained in Section 110A of the Customs Act, 1962 which vests jurisdiction in the authority to pass appropriate order for provisional release of the articles/vehicle. The respondent Joint Commissioner considering the said claim of the petitioner by an order dated 18.2.2015 (Annexure-2/A) directed for provisional release of the vehicle (pick-up van) on certain condition(s). The conditions imposed can be appreciated on reading the relevant part of the order which is extracted hereinbelow:

> "Considering the facts and circumstances of the case, the Joint Commissioner of Customs, Patna has been pleased to order for provisional release of Tata 407 Pick-up Van bearing Regn. No. BR-05G-7812 valued at Rs. 7,00,000/-, seized by the Officer of Customs (P) Hqrs., Patna on 23.12.2014 vide Unit Case no. 09/2014-15, to its legal owner on execution of bond for full seizure value of the seized vehicle backed by Bank Guaranty/Cash deposit equal to the seizure value of the offending goods subject to completion of all formalities/conditions as prescribed in this regard."

This has given a cause of action to the petitioner to file the present writ petition.

Mr. Tiwary has submitted that the order is invidiously arbitrary since in the case of some others similarly situate, the said authority passed the order for provisional release of the vehicle/article on execution of bond for full seizure value. However, in some other cases, considering the severity of the allegation, the vehicle was directed to be provisionally released on execution of bond and deposit of part/portion of the seized value of the vehicle/article. He has relied in this regard on diverse orders passed by the respondents as contained in Annexure-5 series. The Counsel has also submitted that if the Court on the basis of pleadings on record as also the relevant provisions of Act is satisfied that the authorities have not acted reasonably then the same may constitute a case of violation of Article 14 of the Constitution of India.

Per contra, the Counsel for the Customs, through diverse statements made in the counter affidavit, has explained the situation under which those orders (Annexure-5 series) were passed. In her submission, the conditions for provisional release will depend on the facts of each case. No parallel can be drawn. It has also been contended that the petitioner has statutory remedy of filing appeal if the petitioner is dissatisfied by the present order.

There is no controversy that the Statute confers a right on the persons like the petitioner to seek provisional release of the article/vehicle. Parties have not addressed this Court on this issue. The only consideration before this Court, in the present case, is whether the condition(s) as imposed by the respondent for provisional release of the vehicle is onerous and smacks of whims of the Customs Authority. Besides placing the diverse orders which the respondent has passed while directing for provisional release of the article/vehicle, as noticed above, the Counsel for the petitioner has also drawn attention of the Court to the order passed by the Hon'ble Apex Court in the case of Western Components Ltd. versus Commissioner of Customs, New Delhi (Annexure-7 to the writ petition) wherein the Apex Court while considering the issue akin to this observed as under:

> "Redemption fine imposable even after release of goods on execution of bond- Mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods – Section 125 of Customs act, 1962.[para 1]"

Having regard to the rival submissions of the parties, in my view, the ends of justice would sub-serve if the present application is disposed of by the following order:

Let the respondent in the light of order (Annexure-2/A) release the vehicle of the petitioner bearing Registration No. BR-05G-7812 on execution of the bond for full seizure value of the seized vehicle and also depositing a sum of Rs. 1,00,000/- as security deposit.

The writ application is disposed of.

(Kishore Kumar Mandal, J)

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