$~56.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(CRL) 3454/2016 and Crl.M.A. No. 18774/2016

M/S VIDAHATA OVERSEAS

..... Petitioner

Through: Mrs. Anjali Jha Manish, Mr. Sagar Rohatgi and Ms. Sunaina Tasricha, Adv.

versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. Brajesh Kumar, Adv for R-1
Mr. Rahul Mehra, Standing Counsel with Mr. Tushar Sannu for GNCTD
Mr. Sanjeev Narula, Sr. Standing Counsel with Mr. Sunil Dalal and Abhishek Ghai, Adv for R-3&4

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

% **01.12.2016**

Issue notice. Notice is accepted on behalf of the State. The petitioner has preferred the present writ petition to seek the following substantive reliefs:

a) issue a writ order or direction in the nature of certiorari to quash the investigation against the petitioner with reference to bill of lading No.APLU032836434 dated 14.05.2016 initiated by the respondent;

b) issue a writ order or direction in the nature of mandamus to stay the proceedings against the petitioner in connection with investigation being conducted by the respondents with reference to bill of lading No.APLU032836434 dated 14.05.2016;

c) issue a writ order or direction in the nature of mandamus or any appropriate writ, order or directions to permit interrogation under Section 108 of the Customs Act, 1962 within office hours in presence of advocate at a visible distance as and when required in connection with investigation being conducted by the respondents.

The case of the petitioner is that the petitioner intended to import a consignment of mobile accessories i.e. charger, earphone, battery etc. of 291671 pieces for USD 296015. The goods were sent by the foreign exporter against a bill of lading to the petitioner, who was the notified party. M/s. Arshiya Northern FTWZ, Khurja was shown as the consignee in the bill of lading. According to the petitioner, the goods were sent by the foreign supplier on credit basis of 45 days. The petitioner states that the order had been placed for the purpose of re-export and for this reason the consignee was mentioned as Arshyia Northern FTWZ, so that the goods could be imported without payment of duty, and the re-export could take place without any restrictions. The petitioner states that on account of financial crisis, the petitioner was not able to file the bill of entry or make payment to its foreign supplier. On 11.08.2016, the petitioner asked the foreign supplier to recall the goods.

The petitioner states that without issuance of any summons, the respondents have searched the residential premises of Keshav Kumar, the proprietor of the petitioner company. The petitioner claims that the family members of Keshav Kumar were threatened that in case he did not appear before the authorities, he would be arrested. The petitioner stated that on 13.10.2016, summons were issued for appearance of Keshav Kumar on 18.10.2016, which was served at the residential premises of Keshav Kumar upon his mother/ sister, and they were allegedly threatened that the proprietor would face dire consequences if he did not appear.

During the course of her submission, learned counsel for the petitioner has stated that Keshav Kumar did not appear in response to the said summons. On 18.10.2016, the summons were issued for his appearance on 20.10.2016, which was again served at the residential premises upon her mother/ sister, and they were allegedly threatened by the officers of the respondent. Yet another notice for appearance was served on 24.10.2016 requiring the proprietor Keshav Kumar to appear on 26.10.2016. The petitioner states that the said summons was not sent to the official premises or the residence by registered post, but they were served on the mother/ sister of Keshav Kumar in the evening of 25.10.2016 – again with the same threats, as aforesaid.

The petitioner states that on 26.10.2016, the petitioner informed the Commissioner of Customs, the Joint Commissioner of Customs and the Superintendent, Noida Customs that they had abandoned the goods as they were the notified party. The petitioner also stated that on account of the forthcoming festival of Diwali, the petitioner would not be able to appear before the authorities. It is in this background that the present petition has been filed.

The submission of learned counsel for the petitioner, firstly, is that since the petitioner has sought to abandon the goods and not filed the bill of entry, the petitioner cannot be called the importer of the goods. In this regard, reliance is placed on the judgment of the Supreme Court in ***Union of India v. Sampat Raj Dugar***, 1992 (58) ELT 163 (SC), and in particular para 19 thereof. Learned counsel submits that there is no cause for any investigation and thus the respondent should be restrained from proceeding with the investigation.

Learned counsel for the petitioner has also sought to place reliance on ***Garden Silk Mills Ltd. & Anr. v. Union of India & Ors.***, (1999) 8 SCC 744 in support of her submission that the ownership in the goods does not vest in the petitioner since the petitioner has not filed the bill of entry for home consumption.

On the other hand, the submission of learned counsel for the respondent is that the goods in question were found to be counterfeit. He states that the goods have also been misdeclared both in terms of description and value. He further submits that the right of the respondents to investigate the case cannot be curtailed at this stage, and all that has been done is to issue notice to the petitioner to join the investigation under Section 108 of the Customs Act. He further points out that since the petitioner has not responded to the summons issued to him earlier, the respondents have already approached the courts of the learned CJM, Noida under Section 108 of the Customs Act.

Learned counsel further submits that the jurisdiction of the Allahabad High Court has already been invoked by the foreign exporter in respect of the same consignment. He submits that since the summons have been issued by the office of the Commissioner of Customs, Noida Customs Commissionerate, the petitioner should approach the court having jurisdiction over the said Commissionerate and this Court should not exercise its jurisdiction in the present case. He also relies on the same judgment of the Supreme Court in ***Sampat Raj Dugar*** (supra) and in particular the observations made in the later part of para 19. He submits that the right of the respondent authorities to investigate the case particularly when, according to them, it is a case of misdeclared goods both in terms of description and value, as also the import of counterfeit cannot be denied.

Since the petitioner was a notified party in respect of the import of the goods in question, the issuance of summons to the petitioner under Section 108 of the Customs Act is but natural. At this stage, no case has been registered against the petitioner and merely on an apprehension that the petitioner may be proceeded against, the investigation and the consequent summons issued to him cannot be quashed. As to whether, or not, the ownership in the goods sought to be imported vested in the petitioner is an issue which would require examination by the respondents.

This Court also finds merit in the submission of learned counsel for the respondent that the petitioner should approach the courts having jurisdiction over the Noida Commissionerate in relation to the investigation being conducted by the said Commissionerate. However, since the petitioner has also expressed his readiness and willingness to join the investigation, for that limited purpose, so as to assuage the apprehension expressed by the petitioner with regard to the treatment that he may be meted out during his interrogation, this Court is exercising its jurisdiction.

It is, therefore, directed that the petitioner shall join the investigation firstly on 05.12.2016 at 11:00 a.m. before the Superintendant of Customs (SIIB), Noida Customs. He shall also appear for interrogation on any subsequent date(s) fixed for that purpose. In case the petitioner joins the investigation, he shall be entitled to be accompanied by his counsel. The counsel is permitted to remain present at a visible distance to the petitioner's proprietor, but the interrogation shall not be audible to the counsel. The interrogation shall be undertaken during the normal working hours. In case the respondent proceeds to arrest the petitioner, three days prior notice shall be given in writing to the petitioner for that purpose.

Petition stands disposed of in the aforesaid terms.

Order dasti under the signatures of the Court Master.

VIPIN SANGHI, J

DECEMBER 01, 2016

sr