

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (T) NO. 249 OF 2017

Pritpal Singh, S/o Shri Late S. Jaswant Singh, R/o 16/34, Top Floor, East Patel Nagar, New Delhi - 110008

... Petitioner

Versus

1. Union of India, through Revenue Secretary, Ministry of Finance, North Block, New Delhi.
2. Additional Commissioner, Customs, Central Excise & Service Tax, Central Excise Bhawan, Dhamtari Road, Tikrapura, Raipur (C.G.)
3. Deputy Director, Directorate of Revenue Intelligence, Nagpur Regional Unit, 6th Floor, 'B' Wing, CGO Complex, Seminari Hills, Nagpur 440006.

... Respondents

For Petitioner	:	Mr. Manish Nigam, Advocate.
For Respondents	:	Mr. Vinay Pandey, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16/08/2017

1. The present writ petition has been filed under Article 226 of the Constitution of India assailing the order dated 23.6.2017 (Annexure P-9 to the writ petition) passed by the Assistant Commissioner (ICD).
2. Vide the impugned order, the Assistant Commissioner has made a communication to the petitioner in respect of a decision taken by the Assistant Commissioner (Customs) rejecting the application moved by the petitioner for provisional release of 284 nos. of split air conditioners fitted with R-22 gas kit.
3. Facts of the case in nutshell are that the petitioner, who is in the business of sale and purchase of electronic goods, has placed an order of purchase of around 284 nos. of air conditioners and the orders were placed upon two of the consignees i.e. M/s Majestic Impex and M/s Vardhman Enterprises. The orders were placed on 12.4.2017. On 14.4.2017, the custom authorities [under Section 110 of the Customs Act, 1962 (hereinafter referred to as 'the Act of 1962')] seized the two

consignments which were received for the petitioner. The seizure was made at Nagpur. So far as the consignment which were brought by M/s Majestic Impex are concerned, since the air conditioners were not fitted with R-22 gas kit they were ordered to be provisionally released, vide order dated 1.6.2017. However, so far as the consignment booked at the behest of the consignee M/s Vardhman Enterprises is concerned, since the air conditioners were fitted with R-22 gas kit thus they were not released on account of the fact that R-22 gas is a restricted item under Schedule-I of the Ozone Depleting Substances (Regulation and Control) Rules, 2000 (hereinafter referred to as 'the Rules of 2000').

4. After the seizure of the products, the petitioner is said to have filed an application (Annexure P-2 to the writ petition) on 12.6.2017 for the provisional release of those products. However, vide impugned order dated 23.6.2017, the application of the petitioner was rejected and it has been communicated vide Annexure P-9 to the petitioner.

5. The contention of the learned counsel for the petitioner is that the said rejection of the application by the Assistant Commissioner was not proper, legal and justified inasmuch as the products which were seized are in fact the air conditioners and not the R-22 gas in its original form. He further submits that the R-22 gas kit fitted with the air conditioners loses its identity and becomes a manufactured product under the definition 2(i) of the Rules of 2000. He also submits that the petitioner has already paid the differential duties on the products and he is further willing to pay any fine or penalty which the department may impose for the release of the said products. He next submits that the authorities concerned have till date not issued any show cause notice so far as the confiscation proceeding is concerned, which is the next course of action which the department has to take under the provisions of Section 110(2) of the Act of 1962. He further

submits that the petitioner may be granted provisional release of those items as the products would lose its value if the same are retained by the department for long and the petitioner shall also be subjected to huge business loss. The petitioner is ready to abide by any of the conditions which would be imposed by this Court while grant of provisional release. In support of his contentions, he has relied upon a decision of the Punjab and Haryana High Court in the case of *Horizon Ferro Alloys Pvt. Ltd. & Anr. v. Union of India & Ors*¹ wherein under similar circumstances the Punjab & Haryana High Court has ordered for the provisional release of the items which were seized in the said case and the products which were seized included that of R-22 gas.

6. Learned Counsel for the department however opposes the petition and submits that except for the application for grant of provisional release and which has been rejected, the petitioner as such has not availed other remedies that would be available to him under the law. He further submits that the petitioner should also have filed an appeal against the rejection order and in addition he could have also moved an application for settlement of the case subject to imposition of fine or penalty with the department. In the absence of any of the aforesaid steps been taken by the petitioner, the present writ petition in its present form is not maintainable.

7. He also submits that the action on the part of the department is justified for the reason that once when it has been detected by the authorities that the air conditioners were fitted with R-22 gas kit and the said R-22 gas being a restricted item under the provisions of the Rules of 2000, the department could not have permitted the release of those products provisionally as there is a possibility of the petitioner selling the

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products in the open market which may further cause damage to the ozone layer and the very object of the Rules of 2000 in this regard would get frustrated. He next submits that let the petitioner move an appropriate application in this regard to the competent authority which in turn shall consider the same on its own merits subject to the law of limitation if any under Section 128. He further contended that it could also be a case where the authorities themselves may initiate appropriate proceeding under Section 110 against the petitioner pertaining to the confiscation part where the petitioner would be given sufficient opportunity to defend himself.

8. Be that as it may, when we peruse the judgment which has been relied upon by the learned counsel for the petitioner, i.e. *Horizon Ferro Alloys Pvt. Ltd.* (supra), we find that the Division Bench of the Punjab & Haryana High Court also in a case where the R-22 gas and a huge quantity of cigarette were seized did not grant provisional release of R-22 gas at the same time granted provisional release of around 300 cartons of cigarette which were seized by the custom authorities. As such the judgment of Punjab & Haryana High Court may not come to the rescue to the petitioner at this juncture.

9. When we peruse the provisions of law, we find that Section 125 of the Act of 1962 specifically deals with a situation where option to pay fine in lieu of confiscation is envisaged. That is to say, whenever confiscation of any goods is authorised under this Act, the officer can float an option to the person from whom the product has been seized to pay the fine in lieu of confiscation proceeding. In the instant case, the said option is still open. The authorities may take recourse under Section 125 on their initiation of the confiscation proceeding. If not, the petitioner would also be at liberty to move appropriate application for settlement of his grievance by invoking Section 125. Further, if at all, if the petitioner is aggrieved by the order of

rejection dated 23.6.2017, subject to the limitation provided under the provisions of law, the petitioner would also have the liberty for challenging the same.

10. What is also pertinent to mention at this juncture is that the seizure in the instant case was made as early as on 14.4.2017, already more than 4 months has lapsed. Till date, if the contentions of the petitioner are to be accepted, no show cause notice has been issued by the department pertaining to the confiscation proceeding as is required under Section 110.

11. Accordingly, this Court is of the opinion that ends of justice would meet if the petition itself is disposed of with a direction to Respondent No.2 to take prompt action on the proceeding under Section 110 under which the products of the petitioner have been seized on 14.4.2017 and it is also expected that Respondent No.2 shall make all endeavours for concluding the proceedings within a reasonable period i.e. within a period of four months from the date the certified copy of this order is presented before Respondent No.2.

12. It is made clear that this Court has not expressed any opinion on the merits of the case and the authorities concerned shall decide the matter purely on its merits, in accordance with law.

13. With the aforesaid directions, the writ petition stands finally disposed of.

Sd/-
(P. Sam Koshy)
Judge