IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7589 of 2018

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M/s Ayesha Exports Through Its Proprietor Majaharul Haque S/o Late Md. Iliyas, Resident of Ayesha Manzil, Nawabganj, P.S. and Dist. Kishanganj.

... ... Petitioner

Versus

1. The Union of India through the Chief Commissioner, Customs (HQ) Patna.
2. The Commissioner, Customs (Pre.) (HQ), Patna.
3. The Deputy Commissioner, Land Customs Station Jogbani, Araria, Bihar.
4. The Superintendent (Tech) Land Customs Station, Jogbani, Araria, Bihar.

... ... Respondents

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Appearance :

For the Petitioner/s : Mr. P.K. Shahi, Sr. Advocate
Mr.Santosh Kumar Singh, Advocate
For the Respondents : Mr. S.D. Sanjay, Addl. S.G.
Mr. Alok Kumar Agarwal, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
Date : 24-01-2019

Heard Mr. P.K. Shahi, learned senior counsel representing the petitioner assisted by Mr. Santosh Kumar Singh, learned Advocate on Record and Mr. S.D. Sanjay, learned Additional Solicitor General representing the Union of India assisted by Ms. Priya Gupta, learned Advocate and Mr. Alok Kumar Agarwal, learned Advocate.

2. This writ application has been preferred for quashing of the order dated 30.03.2018 contained in Memo No. 900 dated 30.03.2018 passed by the Deputy Commissioner, Land Customs Station, Jobgani, Araria, Bihar (respondent no. 3) by which he has rejected the representation dated 03.02.2018 filed by the petitioner and refused to release the Betel Nuts. The petitioner has also prayed for quashing of the seizure report dated 30.03.2018 and the test report of Arecanut Research and Development Foundation (in short 'ARDF'), Mangalore on 23.02.2018 on the basis of which the consignment of the petitioner is said to have been put under seizure alleging that the same seems to be of 'Indonesian Origin'.

3. Learned senior counsel representing the petitioner has drawn the attention of this court towards the impugned order as contained in Annexure-P/1. It is submitted that even though the narrations of the impugned order at first instance pretends to provide plausible explanation as to why the customs authorities have seized the Betel Nuts in question but a careful perusal thereof would show that what have been narrated in the impugned order are a mere pious wish of the authorities without there being any law to support them in their views.

4. Learned senior counsel submits that when the customs authorities had seized the Betel Nuts on earlier occasion relying upon the report of M/s Arecanut Research & Development Foundation, Mangalore, on a challenge made to that in the case of Union of India and others Vs. Salsar Transport Company and Another (MJC No. 2185/2013 arising out of CWJC No. 3784/2013; the learned coordinate Bench of this court vide it's judgment and order dated 24.07.2013 held that the Union of India and it's authorities who were the petitioners in the said case had totally failed to bring on record any material to show that it is an accredited laboratory by a competent authority under the Act and Rules. The learned coordinate Bench thus concluded that no legal liability can flow from the report of such an institution.

5. The learned senior counsel has also pointed out from Annexure-P/12 to the writ application that on an application under the Right to Information Act (in short the "RTI") when the Directorate of Arecanut & Spices Development, Government of India was called upon to inform as to, whether a 'Betel Nut' is indigenously grown or is of foreign origin (for example from Burma/Myanmar from Indonesia) can be determined by means of any laboratory test, answer supplied by the Government says "No laboratory test have been standardized for tracing the country of origin".

6. From the materials available on the record in the form of certificate of origin for exports free of customs duties under the treaty of trade between the Government of Nepal and the Government of India as also from the import release order issued by the Directorate of Plant Protection, Quatantine Storage, Ministry of Agriculture, Government of India, learned senior counsel submits that it would appear that so far these documents are concerned there is no dispute with regard to their genuineness. The import release order issued by the Officer Incharge, Plant Quatantine Station, Jogbani, Bihar would show that after holding inspection on 19.12.2017 he had recommended for release of the vehicle bearing No. UP66E-9171 which is said to be loaded with Betel Nuts.

7. It is further pointed out that once again the Plant Protection Officer has conducted inspection on 08.02.2018 and gave his remarks 'recommended for release'. A reading of this order present at page-105 of the writ application would show that the same has been issued in accordance with the provisions of Clause 3(16) of the Plant Quatantine (Regulation of Import into India) Order, 2003.

8. It is submitted that even from the reading of the impugned order (Annexure-P/1) it would appear that respondent no. 3 has recorded his opinion based on the ARDF test report saying that the 'Betel Nuts' seemed to be of Indonesian origin. Learned senior counsel thus submits that once this court has held that the report of ADRF Mangalore has got no legal sanctity, the authorities of the Department of Customs are not justified in seizing the Betel Nuts imported from Nepal having certificate of country of origin as Nepal.

9. It is submitted that after this specific adjudication by the learned coordinate Bench of this court in MJC No. 2185/2013 at the instance of the Union of India, seizure of Betel Nuts taking into consideration the report of ADRF Mangalore alone would be unjust, improper and in the teeth of the judgment of the learned coordinate Bench. A copy of the said judgment is available at Annexure-P/21 of the writ application.

10. It is also informed that said order present at Annexure-P/21 was challenged before the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No. CC7331/2014, which was dismissed on 08.05.2014 keeping the question of law open.

11. On the other hand, Sri S.D. Sanjay, learned Additional Solicitor General of India submitted that a perusal of the impugned order would show the mode and manner in which the Betel Nuts are being traded from Nepal. He has read out some of the paragraphs of the impugned order in his attempt to save it. However, at the end, learned Additional Solicitor General could not satisfy this court from the materials available on record as to the basis of reaching to a conclusion that the 'Betel Nuts' in question is of Indonesian origin. It was all the more difficult for him when it was found that in the impugned order itself it has been referred that the ARDF test report reported that the Betel Nuts seemed to be of Indonesian origin. The word 'seemed to be' clearly provides the indecisiveness of the report. Again, on the face of the information furnished under Right to Information present at Annexure-P/12 wherein it is provided that no laboratory tests have been standardized for tracing the country of origin, he could not satisfactorily explain that how the test report of ARDF Mangalore which is not a accredited Lab alone will be a document sufficient to bring the case within the scope and ambit of the custom duty.

12. Having heard learned Senior counsel for the petitioner and learned Additional Solicitor General of India, this court is of the considered opinion that once the learned coordinate Bench of this court has held that in absence of there being any material to show that M/s Arecanut Research & Development Foundation, Mangalore is an accredited laboratory by competent authority under the Act and Rules, it's report cannot have a consequence of fastening of any legal liability and 'No legal liability can flow from the report of such an institution' the respondent authorities were not justified in again relying upon the ADRF Mangalore's report to justify the seizure in question. In fact such an attempt of the respondent authorities would be contemptuous in nature as it is likely to cause harassment to the traders, by not following the judgment of the court.

13. This court also finds from Annexure-P/12 that it is a reply of the Directorate of Arecanut & Spices Development, Government of India which clearly provides that no laboratory test have been standardized for tracing the country of origin.

14. As stated above even the learned Additional Solicitor General had the difficulty in answering as to what will be the situation on the face of this reply.

15. This court is of the opinion that in absence of there being a standardized laboratory test for tracing the country of origin, established under some statute and such Labs have been accredited by the competent authority and the Labs could have the scientific method to come to a conclusion that a Betel Nut is of a particular country's origin, it would not be in the interest of justice to direct the petitioner to pay the custom's duty.

16. At this stage, learned Additional Solicitor General submits that in fact on the basis of materials which are available on the record, in his opinion now the time has come when the Government of India will have to think over either continuing with the treaty in question or to develop a scientific method to find out the country of origin to save the government's revenue.

17. In the opinion of this court, it is for the Government of India to think over it. So far as the present position is concerned, this court would have no hesitation in coming to a conclusion that the petitioner would be entitled for the reliefs prayed in the writ application.

18. This writ application is thus allowed. The impugned orders are quashed.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
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