IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.311 of 2019
In
Civil Writ Jurisdiction Case No.7589 of 2018

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

... ... Appellant/s

Versus

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

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Dr. K.N.Singh, A.S.G.
		Mr.Anshuman Singh, C.G.C.
For the Respondent/s	:	Mr. P.K.Shahi, Sr. Advocate.
		Mr.Santosh Kumar Singh, Advocate.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 28-09-2020

The short point which arises for consideration is as to whether the seizure of the goods, i.e. betel nuts, by the Customs Authorities is per law or not?

The learned Single Judge had allowed the writ petition, quashing the authorities’ action in seizing the goods, solely on the ground that the laboratory where the Customs Authorities got the samples of the goods tested and obtained laboratory-report (Annexure- P/12) was not allegedly authorized to do so.

In support of the writ petition, Shri P.K. Shahi, learned senior counsel invites our attention to the decision rendered by a Coordinate Bench of this Court (D.B.) in **Letters Patent Appeal No.1302 of 2019**, titled as **M/s Ramesh Kumar Baid and Sons & Anr. Vs. Union of India & Ors.,** decided on **20-12-2019** as also in the case of **Commissioner, Custom Department, Government of India, Patna Vs. Dwarika Prasad Agarwal & Ors.**, reported in **2009 (2) PLJR 858**.

We agree with the finding returned and the reasons assigned by the learned Single Judge in allowing the writ petition. The seizure of the goods has to be strictly under the procedure established by law. A confiscatory statute requires interpretation and application as per letter and spirit.

Now, what are that procedure and the law?

Before that, let us refer to specific undisputed facts.

Petitioner, an Indian citizen, is engaged in the trade of betel nuts. The Government of India has prohibited the import of betel nuts, save and except under law. That such a product is permitted to be imported from Nepal is not in dispute. But there is a caveat. It must be homegrown in Nepal. Under such stipulation, petitioner imported a certain quantity of betel nuts from Nepal, between the period 11th of December, 2017 to 27th of January, 2018. It appears that based on specific intelligence reports, that Nepal itself was importing betel nuts from third countries. On the suspicion that petitioner's imported goods were also not homegrown in Nepal, but had a third country origin, the authorities established under the Customs Act, seized the goods at the Customs Centre adjoining the International Border of Nepal. Whereafter the authorities sent the sample of the goods for testing to the laboratory.

This Court in **M/s Ramesh Kumar Bind and Sons & Anr.** (supra) held that seizure, by the customs authorities, has to be necessarily under the Customs Act, 1962 (hereinafter referred to as the “Act”), which is also the case of the Revenue.

Undoubtedly the Act authorizes seizure and recovery of certain goods. Certain persons also stand authorized to implement its provisions effectively.

But then, such seizure necessarily has to be under the law, the procedure prescribed therein and not de hors to it.

On record, petitioner has placed documents indicating (a) purchase of the product from a party at Nepal; (b) before shipment, the product examined by the competent authority and certified to be of Nepalese origin; (c) The same allowed to be authorizedly shipped into India.

Well, this is all that was required to be done on the part of the petitioner and nothing more.

To the contrary, there is nothing on record to establish, save and except for a trained eye of an officer having acquired proficiency as an expert, that the product shipped by the petitioner was not of Nepalese origin. If at all the product was not of Nepalese origin or that the person having trained eye had some suspicion, it ought to have got the goods stopped shipped at the earliest, or the samples thereof examined from an authorized laboratory which was not done in the instant case. Also, there is no challenge to the original certification of the product being of Nepalese origin.

Here the Revenue has taken a contradictory stand. On the one hand, they seek reliance upon the report of the laboratory, on the other, opinion of the expert.

We also find that the reason to believe furnished by the officer in seizing the product, is not the trained eye of the expert, but the report of the laboratory disclosing the texture of the sample to be not that of Nepalese origin.

If that be so, then obviously no error can be found with the reasoning adopted by the learned Single Judge in allowing the writ petition and quashing the action taken by the authorities established under the provisions of the Customs Act.

Most emphatically Dr. K.N. Singh, learned Additional Solicitor General, emphasizes the action to be based on the Intelligence Report of Nepal importing betel nut from a third country.

This submission, we do not find to be born out from any cogent material on record.

He further emphasizes that petitioner had an equally alternate efficacious remedy of filing an appeal under the provisions of the Customs Act and as such, the learned Single Judge erred in allowing the writ petition, interfering with the impugned order passed by the authorities.

Reading of the order reveals such plea not to be raised at the time of hearing of the writ petition. Even in the counter affidavit filed in the writ petition, no such plea was taken.

Be that as it may, the issue is purely legal, jurisdictional in nature, at this point we are not inclined to dismiss the writ petition on such a ground, for prima facie we are convinced that the action taken by the authorities is per se, *de hors* the procedure established by law.

Further, it is not that this Court had interdicted completion of the investigation.

All along the goods were in the custody of the Revenue. The sample was got examined from the laboratory only once. No prayer for re-examination was ever sought for or turned down by this Court. It was always open for the authorities to have got the goods re-examined from any one of the authorized laboratories, which they failed to do so. As such, it would not be correct to contend that by the mere filing of the writ petition, an endeavour was made by the petitioner to stall the process of investigation.

Simply because the petitioner has been importing or exporting huge quantity of betel nuts, that itself would not be a ground, inferring his intent or conduct of either infringing or circumventing the provisions of law.

As such, for reasons mentioned above and more specifically, when a Coordinate Bench of this Court has already taken a view on the line of the petitioner's case, we dismiss the present appeal.

There is neither any illegality nor any perversity, warranting interference.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

sujit/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	