

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6197 of 2020

=====

Shree Enterprises having its Registered office Near Hotel Ritu Raj, Kedar Road, Guwahati, Assam 781001 through its Authorized Representative Rajib Kumar Giri, Male, aged about 33 years, son of Shri Rammilon Giri, resident of Andhra Chowk, Mirza Nagar, P.S. Mahua, District Vaishali, Bihar.

... .. Petitioner/s

Versus

1. The Union of India through Chief Commissioner, Customs, Central Revenue Building, Birchand Patel, Path, Bihar.
2. The Commissioner of Customs (Preventive), 5th Floor, Central Revenue Building, Birchand Patel, Patna, Bihar.
3. The Additional Commissioner Customs (Preventive), 5th Floor, Central Revenue Building, Birchand Patel, Patna, Bihar.
4. The Assistant Commissioner, Customs (Preventive), Division Forbishganj, District Araria, Bihar.
5. The Inspector cum Seizing Officer, Customs (P), Forbishganj, District Forbishganj, District Araria, Bihar.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate
For the Customs	:	Mr. Alok Kumar Agrawal, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 07-07-2020

The matter has been heard *via* video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Mr. Prabhat Ranjan, learned counsel for the petitioner and Mr. Alok Kumar Agrawal, learned Standing Counsel for the Department of Customs.

3. The petitioner has moved the Court for following relief:



“That this is an application on behalf of the petitioner above named seeking issuance of appropriate writ, rule or direction for return of 21,700 Kgs of Dried Areca Nut and Tata Truck bearing Registration No. UP-15CT-6245 seized on 01.12.2019 in terms of the statutory provision as contemplated under Section 110(2) of the Customs Act, 1962.”

4. At the outset, learned counsel for the Customs submitted that he has filed a counter affidavit raising preliminary objection with regard to the maintainability of the writ petition. It was submitted by learned counsel that the person who has filed the present writ is not authorized as no details or supporting document in support of his right to file the writ application has been brought on record. It was further submitted that in the counter affidavit the Customs has brought on record the authorization in favour of another person who is authorized to act as the representative of the petitioner who has filed the present writ application.

5. Learned counsel for the Customs drew the attention of this Court to order dated 30.06.2020 passed in C.W.J.C. No. 6672 of 2020. It was submitted that under similar circumstances, the writ petition was dismissed with cost.

6. The Court deems it appropriate to reproduce the



order dated 30.06.2020 passed in C.W.J.C. No. 6672 of 2020,
which reads as under:

“Learned counsel for the petitioner undertakes to remove the defects, if any, within three weeks from the date of start of normal functioning of the Court.

Heard Mr. Prabhat Ranjan, learned counsel for the petitioner and Mr. Alok Kumar Agrawal, Standing Counsel for the Central Government, Department of Customs.

This writ application has been preferred with a prayer to direct the respondents to release the goods and trucks seized in connection with Motihari Custom Division Case No.163/CUS/MTH/19-20 dated 12.01.2020 in terms of the identical orders passed by the adjudicating authority vide C No.VIII(48)35-CUS/FBG/PR/2019/3264-65 dated 27.12.2019.

When the writ application was called out, Mr. Agrawal, learned counsel for the Department of Customs raised an objection against very filing of the present writ application as according to him the writ application has not only been filed by way of duplication for the same and similar reliefs which have been prayed in a pending writ application being CWJC No.2513 of 2020 filed by this very petitioner before this Court, the writ application has also been filed by suppressing certain facts in paragraph 2 of the writ application where the petitioner has stated that he has not filed any writ application for the self-same relief arising out of the impugned order.

Mr. Agrawal submits that in CWJC No.2513 of 2020 the petitioner has not only prayed for quashing of the seizure order but has also prayed for release of the Betel Nuts and the vehicle in question, therefore this writ application seeking



release of the goods is nothing but a second writ application for similar relief which is already pending consideration before this Court.

In course of submissions, Mr. Prabhat Ranjan, learned counsel has submitted at the bar that Annexure-2 to the present writ application has been filed before the Commissioner of Customs (Preventive) with a prayer for provisional release of the goods and vehicle pursuant to an observation of the learned coordinate Bench of this Court while hearing CWJC No.2513 of 2020. He has also admitted that in paragraph 2 and 8 of the writ application he should have been specific about the earlier writ filed by him which is still pending and the reliefs prayed therein.

Having heard learned counsel for the petitioner and learned counsel for the Central Government, without going into the merit of the writ application and any other contention, this Court agrees with the submissions of learned counsel for the Central Government that the present writ application is by way of a second writ application for identical relief which is pending consideration in CWJC No.2513 of 2020. Learned counsel for the petitioner has himself submitted that the petition for provisional release (Annexure-2) has been filed by him pursuant to an oral observation of the learned coordinate Bench of this Court, if it is so, in the considered opinion of this Court, the petitioner was obliged to bring the issue of provisional release of the goods and vehicle in the same writ petition before the same Hon'ble Bench.

This Court is prima-facie of the view that the statements made in paragraph 2 saying that the petitioner has not filed any writ application for the self-same relief is not correct. The statements made in paragraph 8 saying that the petitioner has filed CWJC No.2513 of 2020



being aggrieved by and dissatisfied with the seizure seems to be half-hearted because uncontroverted submission of learned counsel for the Central Government is that the petitioner has prayed for release of the goods and vehicle in the first writ application. This Court is of the view that the petitioner should have come clean by making complete disclosure.

At this stage, Mr. Prabhat Ranjan, learned counsel has much insisted upon his submission that on earlier occasion on behalf of another party he had done the same thing by filing a second writ application but at that time the respondents had not raised this objection and, therefore, they should not have raised this objection in the present writ application.

This Court is unable to accept this submission because if an issue was not raised in a particular case before a particular bench and that did not fall for consideration, the same cannot be ground for this Court not to allow the respondents to raise any plea which they want to raise in the present writ application. Such submission is devoid of merit and is fit to be outrightly rejected.

Since the Court is of the view that filing of second writ petition by making half-hearted statements is only for purpose of taking a chance to get the matter listed before another Bench and the same has resulted in wastage of Court's time, this Court imposes a cost of Rs.10,000/- (rupees ten thousand) upon the petitioner which will be payable to the Patna High Court Legal Aid Committee within four weeks from today.

The attempt to maintain this writ application, therefore, fails and it is dismissed."

7. Having gone through the aforesaid order, the



Court finds similarity in the present application and proposed to pass orders in similar terms.

8. At this juncture, learned counsel for the petitioner sought leave of the Court to withdraw the writ petition.

9. In view thereof, as learned counsel for the petitioner has prayed for withdrawal of the writ petition, the Court refrains from imposing cost.

10. Accordingly, the writ petition stands dismissed as withdrawn.

11. The petitioner would be at liberty to approach the appropriate forum, in accordance with law, for the relief prayed for in the present writ petition, which shall be considered on its own merits, including its maintainability, both in law as well as on facts.

(Ahsanuddin Amanullah, J)

Saif/-

AFR/NAFR	
U	
T	

