IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 10881 of 2018

---

1. Md. Sajjad Mustafa, S/o Late Gulam Mustafa, at M/s Rahul Traders, Near Over Bridge, NH-28, POPS- Teghra, Dist. Begusarai (Bihar).
2. Shri Lal Babu Rai S/o Shri Kailash Yadav At-Teghra Naya Tola, POPS- Teghra Ward No. 06, Dist- Begusarai (Bihar)
3. Md. Rasid, S/o Md Jawed Akhtar, Teghra Bajalpura, Ward No. 08, POPS- Teghra, Dist. Begusarai (Bihar)

... ... Petitioner/s

Versus

1. Union Of India through the Commissioner of Customs (Prev), Patna, 5th Floor, Kendriya Rajaswa Bhawan, Bir Chand Patel Path, Patna- 800001.
2. The Assistant Commissioner, Customs (Prev) Division, Forbesganj, Goryare Chawk, Forbesganjm Dist- Araria (Bihar)- 854318
3. The Superitendent (Prev), Customs (Prev) Division, Forbesganj, Goryare Chawk, Forbesganjm Dist- Araria (Bihar)- 854318
4. The Inspector (Prev), Customs (Prev) Division, Forbesganj, Goryare Chawk, Forbesganjm Dist- Araria (Bihar)- 854318

... ... Respondent/s

Appearance :
For the Petitioner/s : Mr. Amit Pandey, Advocate
For the Respondent/s : Mr. Anshuman Singh, Advocate

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

Date : 17-12-2020

Petitioners have prayed for the following relief(s):-

> "i) To issue a writ in the nature of Certiorari for quashing the Seizure Order/Seizure Receipt and Panchnama dated 14.01.2017 whereby and whereunder the seizure of 95 numbers of empty drums as evaluated as Rs.95,000/- and Tata 407 Mini Truck (Old & Used) bearing Registration No. BR-1G/9472 as evaluated Rs.3,00,000/- was seized

on 14.01.2017 and consequential Order-In-Original No.121/IMPORT/2017-18 dated 12.02.2018 whereby the aforesaid goods and vehicle has been confiscated;

ii) To issue a writ in the nature of mandamus commanding the authorities to release the 95 numbers of empty drums valued at Rs.95,000/- and Tata 407 Mini Truck (Old & Used) bearing Registration No.BR-1G/9472 valued at Rs.3,00,000/- seized on 14.01.2017 unconditionally;

iii) To grant any other relief or reliefs to which the petitioners are entitled in the facts and circumstances of the case."

We have heard Shri Amit Pandey, learned counsel for the petitioners at length. However, we are not inclined to agree with his submission that *ex-facie*, petitioners have made out a case of the seizure of the goods, i.e. 95 number of empty drums, to be illegal for not having its origin at third country.

We are of the view that the disputed questions of fact, serious in nature, cannot be adjudicated in the present writ petition filed under Article 226 of the Constitution of India.

According to the petitioners, the seized goods, i.e. empty drums, were purchased from SSF Industries Limited and as such do not fall within the category of 'OTC', origin at third country.

It is not in dispute that any import of such items falling within the category of 'OTC' is prohibited in law.

To substantiate the claim of the origin of the seized material is not 'OTC', our attention is invited to communication dated 17th February, 2017 (Annexure-17) and the invoice dated 10th January, 2017 (Annexure-8). Significantly, both these documents cannot be linked to the goods seized vide a seizure memo, dated 14th January, 2017, Annexure-2, which subsequently stands released provisionally to the owners vide orders dated 25th January, 2017 (Annexure-4 series).

It is also not in dispute that the vehicle from which the goods were seized is different than the one indicated in the invoice, dated 10th January, 2017, Annexure-8. The total value of the goods seized is Rs.95,000/- and Rs. 3,00,000/- respectively. It is also not in dispute that the proceedings under the provisions of the Customs Act, 1962 stands initiated and as such we are of the considered view that disputed questions as to whether the goods are of third country origin or otherwise are the very same goods which stand sold by SSF Industries Limited can best be adjudicated by a fact finding authority, be it the Assessing Authority or an Appellate Authority.

To us, the order of confiscation dated 12th February, 2018 passed by the Assistant Commissioner, Customs (Prev.), Division, Forbesganj, in Order no.121/IMPORT/2017-2018 (Annexure-6) cannot be said to be perverse or without jurisdiction, warranting interference by this Court.

We clarify that the Appellate Authority shall decide the appeal on merits, uninfluenced by any of the observations made by us on merits of deciding the present petition.

Shri Anshuman Singh, learned counsel appearing for the Revenue, who has empathically opposed the present petition, clarifies that if the petitioners were to file the appeal within a period of two months from today, the limitation shall not be allowed to come in the way of adjudication of appeal on merits.

Statement is accepted and taken on record.

As such, we dispose of the present writ petition reserving liberty to the writ petitioners to file an appeal, if so desired within a period of two months from today.

We direct that the Appellate Authority shall positively decide the appeal, per law, within a period of two months thereafter.

Thereafter, the petitioners can take recourse to such remedies as are otherwise available in law.

If necessary, proceedings during the time of current

Pandemic Covid-19 would be conducted through digital mode.

The instant petition sands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, also stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

sujit/-

AFR/NAFR	
CAV DATE	
Uploading Date	21.12.2020
Transmission Date	