Serial No.04
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 248 of 2020

Date of Order: 19.10.2020

Shri. Eanam Ahmed Laskar Vs. The Commissioner of Customs (Preventive), NER, Shillong.

Coram:

Hon'ble Mr. Justice Ranjit More, Judge.

Appearance:

For the Petitioner/Appellant(s) : Mr. N.Dasgupta, Adv.

For the Respondent(s) : Dr. N.Mozika, Sr. Adv. with
Mr. J.I.Nongrum, Adv.

1. Heard Mr. N.Dasgupta, learned counsel for the petitioner as well as Dr. N.Mozika, learned Sr. counsel for the respondent.

2. It is the case of the petitioner that he purchased 18.6 MT Mizoram origin betel nuts from Champhai, Mizoram. While the betel nuts were in transit from Champhai to Aizawl by two trucks, Assam Rifles personnel seized these trucks on 17-03-2020 on the highway at Kawlbem Forest Gate, Mizoram and handed over to the customs authorities, Aizawl. It is further the case of the petitioner that Mizoram is the 8th highest grower of betel nut in India, therefore, there is dispute whether the goods are indigenous or imported. However, pending adjudication, by order dated 02-07-2020 issued by Superintendent Customs Preventive Force, Champhai, at the instance of Commissioner of Customs (Prev.) NER, Shillong, the goods/betel nuts were allowed provisional release under Section 110A of the Customs Act, 1962 subject to condition that the petitioner shall deposit an amount of ₹70.51lakh and also execute bond for 100% value of seized goods. Petitioner being aggrieved by this condition approached this Court invoking Article 226 of

the Constitution of India. Petitioner has approached this Court directly as according to him, there is no alternative efficacious remedy available.

3. The petition is opposed by the respondents by filing affidavit in reply. The preliminary objection taken is that petitioner can approach the Central Excise, Customs and Service Tax Appellate Tribunal by way of an appeal. On merit, it is the case of the respondent that the place of seizure of the subject betel nuts is Champhai District of Mizoram which borders Myanmar and which is not a betel nut growing area. The respondents in this regard relied upon the data provided by the Mizoram Government vide letter dated 06-08-2020 which according to him clearly indicates that during the years 2017-18, 2018-19 and 2019-20 there is/was no area under betel nut cultivation in Champhai District of Mizoram and the production of betel nut in Champhai district is/was nil.

4. At this stage, we need not go into the merits of the case namely, whether the goods are indigenous or imported. The limited grievance made in this petition is about the release order under Section 110A of the Customs Act and especially the condition precedent for the release of the subject betel nuts.

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5. The petitioner has filed rejoinder affidavit dated 12-10-2020 and reiterated that the order which is subject matter of the petition is appealable before the Division Bench of the Central Excise, Customs and Service Tax Appellate Tribunal but the Division Bench of the Tribunal is not available. The contents of this rejoinder affidavit filed by the petitioner are not disputed by the respondents by filing counter affidavit. In that view of the matter, I accept the contention of the petitioner that alternative efficacious remedy is not available and entertain this petition invoking my jurisdiction under Article 226 of the Constitution of India.

6. So far as the challenge to the impugned order is concerned, the petitioner relied upon the judgment of the Division Bench of Delhi High Court in ***Agya Import Ltd vrs. Commissioner of Customs, New Delhi 2018 (362) E.L.T. 1037 (Del.)*** The respondents contended that the impugned order is passed on the basis of Circular No. 35/2017-Cus, dated 16-08-2017.

Respondents also relied upon the judgment of the Division Bench of Madras High Court in the case of ***Commissioner of Customs vrs. M/s. Novel Impex*** decided on September, 2018.

7. I have gone through the said Circular dated 16-08-2017 as well as the decisions cited before me. Under the said Circular, guidelines are laid down for provisional release of seized goods. The relevant guidelines read as follows:

> *"2.1. Seized imported goods shall be released provisionally by the competent authority upon request of the owner of the seized goods, subject to executing a bond for the full value/estimated value of the seized goods.*
>
> *2.2. Further, in addition to the Bond mentioned at Para 2.1. above, the competent authority shall take a Bank Guarantee or Security Deposit to cover the following:*
>
> *(i) the entire amount of duty/differential duty leviable on the seized goods being provisionally released;*
>
> *(ii) amount of fine that may be levied in lieu of confiscation under Section 125 of the Customs Act, 1962 at the time of adjudication of the case. While securing the same, the competent authority shall take into account the nature of the seized goods, the duty and charges payable on the said goods, their market price and the estimated margin of profit;*
>
> *(iii) amount of penalties that may be levied under the Customs Act, 1962, as applicable, at the time of adjudication of the case."*

8. The Circular dated 16-08-2017 issued by the Customs authority was the subject matter before the Division Bench of the Delhi High Court in ***Agya Import Ltd*** (supra). The Division Bench of the Delhi High Court considered the earlier decision of the Coordinate Bench in WP(C) No. 3965/2017 in the case of ***Mala Petrochemicals & Polymers vrs. The Addl. Director General, DRI & Anr***. as well as the Madras High Court judgment in the case of ***Malabar Diamond Gallery P Ltd. vrs. The Addl. Director General DRI*** and held that the conditions of the provisional release referred above as laid down in para 2.1 and 2.2 are merely guidance and cannot be treated as mandatory, in all circumstances.

9. So far as the judgment relied upon by the learned counsel for the respondent in ***M/s. Novel Impex*** (supra) is concerned, the Division Bench of the Madras High Court in para 31 held that the subject Circular can be guidelines for the officers and such circulars also provide for exercise of discretion by the competent authority.

10. Be that as it may, the petitioner has filed additional affidavit dated 15-10-2020 wherein at page 7 of this affidavit he has annexed order dated 20-02-2020 by the Superintendent (Adjn.), Office of Commissioner of Customs (Prev.) NER, Shillong under which the betel nuts which was seized on 12-11-2019 from its owner, by name, Mohibur Rahman Mazumdar was provisionally released on payment of Security Deposit of 25% of seizure value of the seized betel nut and execution of Bond for 100% of the value of the seized betel nuts.

11. In the light of the decision of the Division Bench of Delhi High Court in ***Agya Import Ltd*** (supra) where under it is held that Circular dated 16-08-2017 is directory and not mandatory as well as decision of the Madras High Court that the conditions for said Circular are merely guidance coupled with the order dated 20-02-2020 issued by the Superintendent (Adjn.) under which the betel nuts were provisionally released on deposit of 25% of the seizure value, I am of the considered view that the impugned order cannot be sustained especially when it is the specific case of the petitioner that the seizure value of the subject betel nuts is ₹52.23 lakh and under the impugned order the petitioner was asked to deposit an amount of ₹70.51 lakh. Accordingly, the petition is disposed of with the following directions:

1. The impugned order is quashed and set aside.

2. The matter is remanded back to the Commissioner of Customs (Prev.), NER, Shillong to reconsider the provisional release of the subject betel nuts belonging to the petitioner in the light of the decision of Delhi High Court in ***Agya Import Ltd*** (supra) as well as decision of the Madras High Court in ***M/s Novel Impex*** (supra) and the order of the Superintendent (Adjn.) dated 20-02-2020 on which petitioner relied upon.

3. The Commissioner of Customs (Prev.) NER, Shillong shall take appropriate decision as early as possible and in any case within the period of 3 weeks from the date of receipt of this order.

4. Needless to say that the decision shall be taken after giving an opportunity of hearing to the petitioner. The said Commissioner of Customs (Prev.) NER, Shillong, thereafter, shall communicate his decision to the petitioner within the period of 2 weeks.

5. It is made clear that in the event any order adverse to the interest of the petitioner, he is at liberty to challenge the same before appropriate forum.

12. Writ petition stands disposed of.

Judge

Meghalaya
19.10.2020
"Samantha PS"