06 24.11.2021
RP Ct. No. 16
AN

MAT 947 of 2021
with
IA No. CAN 1 of 2021

Biplab Kumar Chowdhury
vs.
Union of India & ors.

Mr. Kishore Dutta, learned senior advocate
Mr. Aniket Mitra
Mr. Surendra Kumar Sharma
... for the appellant

Mr. K. K. Maiti
Mr. Tapan Bhanja
... for the Customs Authority

This appeal filed by the writ petitioner is directed against the order dated 03.08.2021 passed in WPA 11623/2021. The said writ petition was filed by the appellant praying for issuance of writ of mandamus to direct the respondent nos. 2 and 3 to consider and dispose of the representation given by the appellant dated 23.03.2021 and 13.04.2021; to issue a direction to the authorities to take prompt steps to release the monetary compensation/reward which the appellant is entitled to as he was the informant and for a further direction to examine the entire records as to how, when and under what circumstances the lorries and trucks were released to the respondent persons. The writ petition was dismissed at the admission stage as being frivolous and aggrieved by such order, the appellant is before us.

We have elaborately heard learned counsel for the parties and perused the materials placed before us. On going through the records which were available before the learned writ court, we are of the view that the writ petition cannot be treated to be a frivolous litigation. The issue as to whether the appellant can be recognized as an informant or not under the relevant circulars issued by the Central Board of Excise & Customs (C.B.E.C.), what is required to be first seen is whether there has been any illegal imports of the betel nuts from the neighbouring countries into the State of West Bengal. The representations given by the appellant dated 23.03.2021 states that as many as 19 trucks had transported the smuggled betel nuts into the State of West Bengal and the activity is clearly hit by the various provisions of the Customs Act and it is also in violation of the notification issued by the DGFT which has fixed tariff @ 4284 USD per metric ton vide notification No. 28/2021_Cus(NT) dated 09.03.2021.

In the assumption of the appellant, the loss of customs duties is to the tune of Rs. 19.37 crores. We are not here to examine the genuinity of the appellant or otherwise as to whether there is any other agenda which the appellant harbours in lodging the complaint. The issue before the Court is whether there has been leakage of revenue; whether there has been illegal importation; whether any of the officials are in connivance with the persons who have imported the betel nuts from the neighbouring countries etc.

The court can take judicial notice of the fact that the Customs Department and the Central Excise Department very often initiate action based on special intelligence. The show cause notice also states that information was gathered by specific intelligence either by the DRI or the DGFT or other investigating agencies. Therefore, there is no requirement for the Customs and Excise to disclose the source of information based on which investigation was undertaken. Therefore, the court fails to understand as to why effective action was not taken by the Customs Department pursuant to the representations made by the appellant.

During the course of argument, learned senior counsel for the appellant filed a supplementary affidavit after obtaining leave of this Court. Learned counsel for the revenue raised a preliminary objection that a copy of such supplementary affidavit was not supplied to him and that he needs to take instruction from the Department.

In our considered view, no purpose will be served in adjourning the matter as we are convinced that something serious is required to be done by the Customs Department. From the bunch of papers which have been filed along with the supplementary affidavit and upon cursory perusal, we find that the trucks along with the consignment has been dealt with by the SGST authority at Siliguri. If the allegation is one of illegal import, prima facie the matter should be dealt with by the Customs

Department. In one of the communications, we find that the SGST authority have collected tax and penalty. It is not clear as to how the State Goods and Services Tax Authorities can collect tax and levy penalty and release truck as well as consignment when allegation is one of illegal importation. Thus, we are of the considered view that the writ petition needs to be heard and decided on merits for which affidavits are required from the concerned respondent viz. Customs Authorities. That apart, the appellant is required to implead the SGST authority as well as the State Government as party respondent so that the matter can be examined from the angle as to whether the SGST authority would have jurisdiction or domain over the said goods and whether they would be entitled to levy tax and penalty.

Thus, for the above stated reasons, we are inclined to interfere with the order passed in the writ petition. The writ petition is restored to the file and number of the learned Single Bench to be heard and decided on merits after affidavits are filed by the respondents.

The appeal is, thus, allowed. The order passed in the writ petition is set aside.

Liberty is granted to the appellant writ petitioner to implead the concerned authorities and the State Government as party respondent in the writ petition.

Liberty is also granted to the appellant to file supplementary affidavit and additional documents in the writ petition.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)