IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.211 of 2019

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The Commissioner of Customs (P) Patna, Central Revenue, Building, B.C. Patel Path, Patna, Bihar.

... ... Appellant/s

Versus

Shri Rakesh Kumar Jindal Son of Late Dhajaram Jindal C/o Global Road Carrier, Dimrapur Chowk, District-Raigarh, Chattisgarh.

... ... Respondent/s

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Appearance :

For the Appellant/s : Dr. K.N. Singh (ASG)
Mr.Anshuman Singh,Sr. Standing Counsel Customs
Mr. Sri Ram Krishna JC to ASG
Mr. Abhijeet Gautam, JC to ASG

For the Respondent/s : Mr.Navendu Kumar, Adv

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-08-2022

Heard.

This miscellaneous appeal is preferred against the order No.FO/77523-529/2017 dated 09.10.2017 passed by the Customs, Excise and Services Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata in Custom Appeal No.127 of 2012 whereby and whereunder the learned Tribunal was pleased to set aside the order – in – original No.04-CUS/CC/DRI/12 dated 22.02.2012 passed by the Commissioner of Customs, Patna and remand the matter to the original authority for fresh consideration in line with the observation contained therein.

It is not in dispute that pursuant to the notice to the show cause dated 4.8.2011, issued by the Additional Director General, DRI, Zonal Unit, Lucknow, the proceedings under the Customs Act, 1962 stood concluded with the passing of the order dated 01.3.2012 (Annexure A/2 page, 38), passed by the Commissioner of Customs, Patna.

The order is composite in nature dealing with 13 parties, to whom a common notice was issued. The said order running into 35 pages, is nothing but reproduction of the pleadings of the respective parties only. In the penultimate part of the order, we find the officer to have, without assigning any reasons, directed confiscation of 1585 bags of Rice and also imposed penalty of different amounts on each one of the parties, to whom notices stood issued.

According to the officer, the total value of the goods, i;e, Basmati rice was Rs.26,22,900/- and that the said goods were meant to be illegally transported to a foreign country, i.e., Nepal.

However, what is the basis for the officer to arrive at such a conclusion, is not borne out from the order on the record.

Aggrieved thereof, some of the parties preferred appeals and seven of such appeals stood disposed of vide common order dated 09.10.2017, passed by Member Judicial, Customs, Excise and Services Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata.

The appellate authority has quashed and set aside the said order, impugned therein, solely on the ground that in view of the law laid down by Hon'ble Delhi High Court in 2016 (335) ELT 605 Del, Mangali Impex Vs. Union of India, the officer/functionary of the department of DRI had no jurisdiction to issue notice.

It is brought to our notice that the said decision stands assailed before Hon'ble the Apex Court and that operation of the said judgment stayed.

In this view of the matter, having given thoughtful consideration, we are of the considered view that the matter needs to be remanded to the Commissioner of Customs, Patna, Bihar for adjudication afresh, for we find his order to have been passed in utter breach of settled principles of natural justice.

The order entails civil and penal consequences.

The officer ought to have assigned reasons in arriving at a conclusion, directing confiscation of the goods, by virtue of and in terms of Section 122 of the Customs Act, 1962.

At this stage, we are informed that there is amendment in the statute enabling the officer(s) of the DRI to seize and issue notice to show cause.

Well, all these pleas are left open to be considered and decided by the adjudicatory authority.

Our attention is also invited to the decision rendered by Hon'ble the Apex Court in 2021 SCC online SC 200 (Canon India Private Limited Versus Commissioner of Customs).

In response thereto, learned ASG clarifies that the said decision is totally inapplicable to the attending facts and circumstances, inasmuch as there Court was dealing with the case where the officer of department of DRI, even though not empowered, had adjudicated the matter under the provision of Customs Act, 1962.

Well, we leave all these issues open to be considered by the adjudicatory authority.

Since the matter pertains to the year 2012, we direct the parties to appear before the officer on 13.09.2022 with a further direction for adjudication of the matter on merits, in accordance with law, on expeditious basis.

Parties undertake to fully cooperate and not take any unnecessary adjournment.

We expect the adjudicatory authority to decide the issue both on law and facts within a period of six months from the date of presence.

Learned counsel for the respondent states that till such time, the final adjudicatory process attains finality, he shall not seek refund of the amount, be it that of penalty or otherwise.

The instant petition sands disposed of in the aforesaid terms.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA