

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 8737 of 2020

MD SAJID @ SAILLU Son of Late Md Umar, Proprietor of M/S Waiz Traders, Resident of Mohalla-Bagh Malukhan, Patna City, Police Station-Patna City Chowk, District-Patna (Bihar).

... .. Petitioner/s

Versus

1. The Union of India, through the Chief Commissioner of Customs (Preventive), 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
2. The Commissioner of Customs (Preventive), Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
3. The Additional Commissioner Cum Adjudicating Authority, Office of the Commissioner of Customs (Preventive) Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
4. The Deputy Commissioner, Customs (Preventive) Division, Muzaffarpur
5. The Deputy Director, Directorate of Revenue Intelligence, Regional Unit, 1st Floor, Customs Office Building, Imali Chatti, Muzaffarpur.
6. The Intelligence officer, Directorate of Revenue Intelligence, Regional Unit Muzaffarpur, 1st Floor, Customs office Building, Imali Chatti, Muzaffarpur.

... .. Respondent/s

WITH

Civil Writ Jurisdiction Case No 8740 of 2020

1. Indriyas Masih, Son of Sri Gulzar Masih, an adult male, Resident of House No. 54, Village - Hamid Nagar, Tehseel - Bilaspur, Police Station- Bilaspur, District - Rampur, Uttar Pradesh.
2. Gurmeet Singh Son of Sri Hardeep Singh, an adult male, Resident of Village - Nanakbadi Gajgola, Post Office - Pakbara, Police Station- Pakbara, District - Moradabad, Uttar Pradesh.

... .. Petitioner/s

Versus

1. The Union of India through the Chief Commissioner of Customs (Preventive), 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
2. The Commissioner of Customs (Preventive), Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
3. The Additional Commissioner cum Adjudicating Authority, Office of the Commissioner of Customs (Preventive) Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
4. The Deputy Commissioner, Customs (Preventive) Division, Muzaffarpur.



5. The Deputy Director, Directorate of Revenue Intelligence, Regional Unit, 1st Floor, Customs Office Building, Imali Chatti, Muzaffarpur.
6. The Intelligence Officer, Directorate of Revenue Intelligence, Regional Unit Muzaffarpur, 1st Floor, Customs Office Building, Imali Chatti, Muzaffarpur.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No 8737 of 2020)

For the Petitioner/s : Mr Saket Gupta, Advocate

For the Respondent/s : Dr K N Singh, ASG

Mr Anshuman Singh, Sr SC, Customs

Mr Manoj Kumar Singh, CGC

(In Civil Writ Jurisdiction Case No 8740 of 2020)

For the Petitioner/s : Mr Saket Gupta, Advocate

For the Respondent/s : Dr K N Singh, ASG

Mr Anshuman Singh, Sr SC, Customs

Mr Manoj Kumar Singh, CGC

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 09-03-2022

In these two cases, the petitioners have assailed seizure of black peeper and the three trucks bearing Registrations No UK 06 CA7293, UP 22 AT 3829 and UP 21 CN1300, on which the black peeper, alleged to be of third country origin, were being transported. Since seizure of the black peeper and the three trucks are constituting one transaction and the petitioners in both the cases are represented by a common counsel, the parties have agreed that the two matters may be considered together. In view thereof, the matters have been heard with a view to final disposal of both the cases. Seizure of the trucks in question is for the reason



that the customs authorities found the trucks to be carrying black peeper of third country origin in contravention of the Customs Act. Legitimacy of seizure of the trucks in question is, directly related to legitimacy and the seizure/confiscation of the black peeper in question. The fate of the three trucks, therefore, is directly dependent upon the decision of this Court as regards the legitimacy of the seizure of the black peeper in question. The trucks in question can only be released if this Court arrives at a conclusion that seizure of the black peeper in question was not in accordance with law. If this Court comes to a conclusion otherwise, the truck owners (petitioners in the second writ petition) would have no case for release of the trucks.

2 Heard learned counsel for the petitioners and learned counsel for the respondents.

3 The brief factual matrix of the case in CWJC No 8737 of 2020 is arising out of a seizure of the petitioner's black peeper, totalling 14199.400 Kilograms (for brevity, **Kgs**) laden in three trucks valued at Rs 70,99,700 (Seventy Lakhs Ninety Nine Thousand and Seven Hundred Only). After the first truck was seized, the other two trucks were located based on statement of the petitioner, the version of which, however,



is at variance, as per claim of the petitioners vis-a-vis the respondents. The valuation of the three trucks bearing Registrations No UK 06 CA7293, UP 22 AT 3829 and UP 21 CN1300 are done by the customs authorities at Rs 9,50,100/- (Rupees Nine Lakhs Fifty Thousand and One Hundred Only), 16,59,935 (Rupees Sixteen Lakhs Fifty Nine Thousand Nine Hundred and Thirty Five Only) and Rs 16,80,000/- (Rupees Sixteen Lakhs and Eighty Thousand Only) respectively.

4 The writ petition was filed assailing the seizure by submitting that there were no “reasons to believe”, as contemplated under Section 110 of the Customs Act and the seizure, therefore, was contrary to the mandate of law. It is further submitted that the petitioner of CWJC No 8737 of 2020 was bona fide purchaser of the black pepper in question from one M/s F M Food Processing and Agro Based Industries. He had purchased total 45,000 Kgs under two Invoices dated 01.07.2018 (Annexure 2). The seized black peeper was part of the said transaction and it was being transported from his godown at Patna to the storage facility at Sarai Bazar in Vaishali. The transfer was necessitated due to heavy downpour and resultant water logging in Patna.



5 The petitioners' counsel has submitted that the authorities have failed to bring on record any reason to believe justifying their conclusion regarding there being any smuggled goods; or that the black peeper was of third country origin. In absence of any material to sustain the reasons to believe, the seizure was itself without jurisdiction and illegal. The submission is that a legal seizure is a *sine qua non* for confiscation of goods under the Customs Act. Since the seizure is not in accordance with law, the order dated 15.06.2021 passed by the Adjudicating Authority under the provisions of Section 122 of the Customs Act for confiscation of the seized goods has also been assailed by filing Interlocutory Application No 1 of 2021. The counsel has also drawn attention of the Court towards the order of confiscation to submit that it is primarily based on statement of the witnesses recorded under Section 108 of the Customs Act, most of which have been retracted. The authorities have not been able to establish that the black peeper in question was of third country origin or smuggled. There was no material before the authorities to pass the order of confiscation. The same is, thus, unsustainable.



6 Learned counsel for the respondents, on the other hand, has submitted that in view of the confiscation order having been passed, it is not open to the petitioners to now contend that there was no “reason to believe” justifying the seizure in question. It is further submitted that now the authorities have conducted the entire confiscation proceedings and arrived at a conclusion after considering the material in accordance with the procedure established under the Customs Act. The confiscation order is based on appreciation of material after allowing the petitioner an opportunity of being heard. The conclusion having been arrived, based on such scrutiny, the petitioners ought to approach the appellate authority under the Customs Act. He submits that the sufficiency of the material may not be looked into by this Court exercising judicial review under Article 226 of the Constitution of India. The retraction of some of the noticees is irrelevant. The alleged supplier of the goods, as per petitioners’ case and the godown owner of the premises containing the storage facility, where the petitioner of CWJC No 8737 of 2020 claimed that he was transporting the goods, have both flatly denied his assertions. The depositions of these two persons recorded under Section 108 of the Customs Act is



referred to by the learned counsel for the respondents in support of their submissions.

7 Further, they submit that there is an alternative efficacious remedy available to the petitioners where, if the petitioners so desire, the issue of sufficiency or of insufficiency of evidence/material may be better considered and decided. This Court may not exercise jurisdiction under Article 226 of the Constitution of India to look into sufficiency of the material. Once material is on record in support of the decision, this Court should not exercise writ jurisdiction in favour of the petitioners.

8 The learned ASG has submitted that an appeal is provided under the Customs Act. The petitioners may avail the remedy of appeal under Section 128 of the Act before the Commissioner (Appeals).

9 Whether the petitioners wish to avail the remedy or not, is an issue which they have to decide.

10 The learned counsel for the petitioners has placed heavy reliance on the decision of this Court in the case of *Yogendra Prasad -Versus- Union of India, reported in 2004 (4) PLJR 675*.



11 From bare perusal of judgment in the case of *Yogendra Prasad (supra)*, it is apparent that in the said case, the petitioner was in possession of a bill of entry, issued by the Customs Department, in respect of the goods which had been seized. Considering these facts and pendency of the confiscation proceedings, the Court had interfered with the seizure. It was clearly a case where there was no material to support “reason to believe”. On the contrary, there was unimpeachable material to show that the goods have been brought into the country based on a bill of entry issued by the Customs Department in respect of the seized goods. The instant cases are not one of no evidence, but one where the veracity or sufficiency of the material is in issue. The facts of the judgment in the case of *Yogendra Prasad (supra)* are distinguishable from the instant cases.

12 Having regard to the disputed nature of materials available on record and submissions which are clearly based on alleged insufficiency/inadequacy of the materials available on record, this Court is of the opinion that same cannot and ought not be gone into by the Writ Court exercising judicial review under Article 226 of the Constitution of India. This Court does not consider it a fit case to interfere with the order



of confiscation dated 15.06.2021, which the petitioners would be at liberty to assail in appropriate proceedings, in accordance with law.

13 In this connection, this Court would take note of the settled legal position based on various precedents governing the field and scope of judicial review under Article 226 of the Constitution of India. Judicial review is normally confined to see that there is compliance with the statutory provisions and the procedure leading to the decision lying for scrutiny. This Court is also required to consider whether the order of the Authority is perverse; or there is some material in support of the order. Once this Court arrives at a conclusion that there is some material in support of the decision and that there is no procedural infirmity, this Court is not expected to embark upon a scrutiny of the correctness of the decision, being swayed by submissions with regard to alleged insufficiency of the material, as is contended in the instant proceedings by the learned counsel for the petitioners.

14 It is well-settled law that judicial review under Article 226 of the Constitution of India is directed against the decision making process. The Court, while exercising judicial review, is not expected to examine the correctness of the



decision as an Appellate Authority. The submissions advanced by the petitioners' counsel essentially assail the correctness of the order passed in the confiscatory proceedings on the ground that some of the statements recorded under Section 108 of the Act has been retracted. The quality of the evidence on record is, therefore, made the basis of assailing the correctness of the decision, which is clearly beyond the scope and purview of the judicial review.

15 This Court finds that there is some material on record based on which the order of confiscation has been passed. Sufficiency of the material or the quality of the evidence is beyond the scope of judicial review and this Court would refrain from embarking on such an enquiry in the instant proceedings. This, however, would not mean that the Court, in any way, approves the conclusion of the Authority, as contained in the confiscation order dated 15.06.2021. The same is open to criticism or challenge in appropriate proceedings under the Act.

16 The learned ASG, during the instant proceedings, has raised the issue of alternative remedy of appeal under Section 128 of the Customs Act. The remedy of appeal, has obviously not been availed since the order of confiscation, was



passed during pendency of the instant proceedings. The same has been assailed by filing an interlocutory application.

17 The forum of appeal under Section 128 of the Customs Act, suggested by the learned ASG, in the opinion of this Court, is the appropriate jurisdiction wherein sufficiency/insufficiency of the material on record may be looked into. The Customs act provides the remedy, which is an alternative efficacious remedy available to the petitioner. Should the petitioner be desirous of availing the remedy of appeal, it would be open to him to raise the issue of pendency of the instant proceedings to meet the issue of limitation. The Appellate Authority, needless to say, would be required to consider the same, having regard to the pendency of the instant proceedings and the suggestion of alternative remedy by the learned ASG.

18 This Court would consider it appropriate to refer to and rely upon decision of the Apex Court in the case of **M/s Radha Krishan Industries vs. the State of Himachal Pradesh & Ors.** reported in **2021 (6) SCC 771** on the issue of exercise of writ jurisdiction where efficacious alternative remedy is available. In para 27 of the judgment, the Hon'ble Apex court has enumerated the principles of law with regard to exercise of



writ jurisdiction when statutory efficacious remedy is available, as follows:

“27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

19 The Court, therefore, realizing the limited scope of judicial review, having regard to efficacious alternative



remedy and since there is no alleged procedural illegality; is not inclined to interfere with the seizure and order of confiscation dated 15.06.2021. The findings of this Court, however, does not, in any way, confer any approval on the decision of the Adjudicatory Authority dated 15.06.2021, having regard to the cases of the petitioners, based on the disputed facts and with respect to sufficiency of the material, and other issues, which it will be open to the petitioners to raise in appropriate proceedings.

20 The applications stand dismissed.

(Madhuresh Prasad, J)

M.E.H./-

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

