

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 383 of 2011

In

Civil Writ Jurisdiction Case No.2221 of 2005

Commissioner Of Customs Patna Veer Chand Patel Path, Central Revenue Building, Patna

... .. Appellant/s

Versus

1. Krishna Bahadur Chhetri And Ors S/O Late Bahadur Chhetri R/O Village-Dhumpara, P.O. Nathua Hat P.S. Banarhat, District Jalpaiguri West Bengal
2. The Union Of India Through The Secretary Ministry Of Finance, Department Of Revenue, Union Of India, New Delhi
3. The Secretary Ministry Of Finance Department Of Revenue, Union Of India , New Delhi
4. Central Board Of Cetral Excise And Customs Through Its Chairman, New Delhi
5. The Deputy Commissioner Of Custom P, Farbesganj
6. The Assistant Commissioner Of Customs, Farbesganj

... .. Respondent/s

Appearance :

For the Appellant/s : Dr. K.N. Singh, Sr. Advocate, ASG
Mr. Anshuman Singh, Sr. Counsel, Customs
For the Respondent/s : Mr. Prabhat Ranjan, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 02-11-2022

In the instant LPA the appellant - Department of Customs has prayed for the following relief:-

“That this appeal is directed against the order dated 25-1-2011 passed by Hon’ble Mr. Justice S.N. Hussain in C.W.J.C. No. 2221 of 2005 whereby and where under the writ ap-



plication has been allowed directing the respondents to pay Rs. 14,63,684 within four months and also to pay the interest at the rate of 12% per annum from the date of seizure upto the date of payment of the entire amount. It has further been directed that any loss accrued to the department of revenue may be compensated by deducting the amount of loss from the pocket of the authority due to whose mistake the public exchequer has been burden.”

2. The respondent *Krishna Bahadur Chhetri* had filed writ application in which he has prayed for the following relief:-

“That this is an application, praying for issuance of appropriate writ/order/direction to the respondent-authorities to make payment of the difference/balance amount Rs. 14,63,684 to the petitioner alongwith lawful interest accrued thereby out of assessed and admitted value of the goods at the time of seizure (Rs. 21,68,100/-) minus the sale proceeds refunded to the petitioner (Rs. 7,04,416/-) alongwith interest and for any other relief or reliefs the petitioner is entitled in the eye of law.”

3. Respondent is into betel nuts trading business. He was transporting betel nuts from Siliguri to Delhi via State of Bihar. The truck was intercepted by the Customs Department of the State of Bihar and goods and truck were ceased by the Customs



Department. To that effect seizure memo/report was prepared on 22.01.1999 *vide* Annexure - 1 to the writ petition wherein the Customs Authority taken note of betel nuts quantity to the extent of 22,275 kgs (net 21,681 kgs) and it has been approximately valued at Rs. 21,68,100/-.

4. Similarly, truck bearing registration number AS-25-4308 was valued at Rs. 8,00,000/-. Such seizure of goods and truck of the respondent was subject matter of adjudication order no. 8/CC/ADJ/2000 dated 16.11.2000 by which the Commissioner of Customs passed the following order:-

“ORDER

1. I order for confiscation of betelnuts of third country origin weighing 21,681 Kgs. valued at Rs. 21,68,100/- seized in this case under Sec.111(d) of Customs Act, 1962 for the detailed reasons recorded above.

2. I order for confiscation of the truck bearing Regn. No. AS-25-4308 under Sec. 115 (2) of the Customs Act, 1962 for the detailed reasons recorded above. However, I give the owner an option to redeem the said truck on payment of a fine of Rs. 1,00,000/- (Rupees one lakhs) under Sec. 125 of the Customs Act, 1962. I also order that Rs. 1,00,000/- (Rupees one lakhs) paid towards cash security deposited at the time of provisional release should be appropriated towards the fine so levied.

3. I impose the following persons/firms personal penalties on the under Sec.112(b) of the Customs Act, 1962 for detailed reasons recorded above.

*i. Sri Vijay Singh Daga
Managing Director of
M/s Bikaner Assam Roadlines
India Ltd.*



*(address given in the notice) Rs.2,00,000/-
(Rs. Two Lakhs only)*

*ii. Sri Krishna Bahadur Chhetriya
Prop. of M/s Dahal Agro Products
Dhumpara
(address given in the notice) Rs.2,00,000/-
(Rs. Two Lakhs only)*

*iii. Mrs. Kamala Devi Baid,
Prop. of M/s Baid Brothers Nokha(Raj.)
(address given in the notice) Rs.2,00,000/-
(Rs. Two Lakhs only)*

*iv. Shri Jitend a Kr. Jat.
Driver of the seized truck
(address given in the notice) Rs.10,000/-
(Rs. Ten thousand only)*

*v. Sri Sanjeev Kumar,
Khalasi of the seized truck
(address given in the notice) Rs.5,000/-
(Rs. Five thousand only)*

The financial status of the accused persons/firms and the gravity of offence committed by them have been taken into consideration in determining the quantum of penalty imposed upon them.

(B.R.MEHRA)

*COMMISSIONER OF CUSTOMS
PATNA. ”*

5. Feeling aggrieved and dissatisfied with the order of the Commissioner dated 16.11.2000, respondent invoked remedy before the Customs, Excise and Gold (Control) Appellate Tribunal, Eastern Bench, Kolkata (for short “Tribunal”). The Tribunal set aside the order of the Commissioner dated 16.11.2000 *vide* order dated 31.05.2001.



6. Feeling aggrieved and dissatisfied with the order of the Tribunal, appellant - Department preferred petition *vide* Tax Case No. 13 of 2001 and connected matters, respondent's case is Tax Case No. 24 of 2001 and department suffered an order on 18.09.2008. Thus, Tribunal order dated 31.05.2000 has attained finality. The appellant - Department is stated to have auctioned the seized goods betel nuts at the value of Rs. 7,04,416/- as against approximate value assigned by the seizure of the goods authority at Rs. 21,68,100/- read with respondent's declaration value @ Rs. 8,59,125/- dated 13.01.1999.

7. The respondent have furnished receipts which were stood in the name of Dahal Agro Products, Proprietor Krishna Bahadur Chhetri (respondent) it is dated 19.01.1999 (Annexure - 3 series) consisting of four receipts in which quantity and value has been revealed. Different quantities which are 3875 and it has been valued of Rs. 2,97,953/-, 3750 Kg valued at Rs. 76,000/- , 38040 and it has been valued at Rs. 3,37,896/- and 3795 and it has been valued of Rs. 1,17,226/- (Annexure - 3 series) is not legible documents (it is xerox copies). However, it is not in dispute that quantity is 297 bags, 22,275 kgs and value is Rs. 8,59,125/-. In other words, declaration read with the aforesaid Annexure - 3 series documents are tallying with each other.



8. In the light of these facts and circumstances, the department proceeded to auction the seized betel nut goods. It is stated that notice was issued however, it was not unserved. In the result, Department proceeded to auction the seized betel nut goods for a sum of Rs. 7,04,416/-. The same was paid in favour of the respondent on 16.02.2004. The respondent is stated to have accepted a sum of Rs. 7,04,416/- under protest on 03.03.2004 *vide* Annexure - 8 and sought for payment of difference of amount with reference to approximate value assigned by the seizing authority *vide* Annexure - 1. Appellant- Department did not acceded to the respondent's request. Hence, the respondent preferred CWJC No. 2221 of 2005 with the aforementioned prayer.

9. Learned Single Judge allowed CWJC No. 2221 of 2005 on 25.01.2011 in favour of the respondent herein. Learned Single Judge has relied on decision in the case of CWJC No. 70861 of 2002 decided on 22.08.2007 while holding that petitioner is entitled to refund of amount to the extent of approximate value determined by the seizing authority. Hence, the present LPA on behalf of the Customs Department.

10. Learned counsel for the appellant - Department vehemently contended that the Single Judge has not apprised material information before determining that the respondent is



entitled to refund of amount with reference to approximate value determined by the seizure authority. It is submitted that Commissioner and Learned Single Judge have not taken note of Annexure - 3 series receipts dated 19.01.1999 read with the declaration dated 13.01.1999 of the respondent. When the respondent himself declared actual value of the seized goods at Rs. 8,51,125/- and he cannot turn around and disown his own document and proceed to take shelter with reference to approximate value assigned by the seizure authority at Rs. 21,68,100/- read with seized betel nuts goods which was auctioned of Rs. 7,04,416/- on 30.03.1999. Auction purchaser lifted the goods on 20.04.1999. Further auctioned amount of Rs. 7,04,416/- was paid to the respondent along with interest on 16.02.2004.

11. In support of the aforesaid contentions learned senior counsel for the department relied on CWJC No. 2221 of 2005 decided on 21.05.2011 and further, LPA No. 808 of 1998 decided 27.07.2007 (Para 5 to 10).

12. Therefore, the order of the learned single Judge is liable to be set aside. It is also pointed out that learned single Judge has not appreciated the prayer in the writ application filed by the respondent. Para 2 of the order of the learned Single Judge dated 25.01.2011 is not in terms of the reliefs sought by the



respondent in his writ application CWJC No. 2221 of 2005. If the respondents disown his document like declaration dated 13.01.1999 read with Annexure - 3 series, receipts documents in which proprietor is respondent - *Krishna Bahadur Chhetri*. The actual amount which is required to be claimed by the respondent is a sum of Rs. 8,59,125/- and not assigned by the Customs Authority which is approximate value. Assigning a sum of Rs. 21,68,100/- by the Customs Authority is not with reference to any material information it is only an approximate value, which was required to be mentioned at the time of seizure of goods.

13. On the other hand, there are material information like declaration dated 13.01.1999 read with Annexure - 3 series documents suffice to hold that the petitioner is not entitled to difference of amount as claimed by him at the best he is entitled to Rs. 8,59,125/- instead of auctioned amount Rs. 7,04,416/-. It is further submitted that during pendency of the litigation department have paid total amount of Rs. 8,59,125/- along with 10% interest. Therefore, the learned Single Judge has committed error in holding that respondent is entitle to approximate value as mentioned in the seizure report.

14. *Per contra*, learned counsel for the respondent resisted the aforesaid contentions and submitted that he had filed



counter affidavit in which he has relied on the following decisions:- LPA 913 of 2003 decided on 25.10.2010, LPA 813 of 2011 decided on 31.08.2012, CWJC No. 10265 of 2011 decided on 02.03.2012, LPA 928 of 2012 decided on 20.07.2012 and, SLP No. 12157 of 2011 decided on 01.08.2011 (*Union of India & Ors. vs. Mahabir Prasad Sarawgi*).

15. Learned counsel for the respondent distinguished the decisions cited on behalf of the appellant in particularly LPA No. 808 of 1998 decided on 27.07.2007 has no application to the case in hand. It is further submitted that Section 14 of the Customs Act, 1962 read with Section 150 would assist the case or respondent since the aforesaid provisions have not been adhered by the appellant - Department. Section 14 of the Customs Act, 1962 deals with Valuation of goods. Section 150 relating to Procedure for Sale of Goods. It is further submitted that before auction proceedings were undertaken by the petitioner - Customs Department, respondent has not been heard in the matter and no opportunity has been provided.

16. The learned counsel for the Customs Department replying to the counter affidavit submitted that the petitioner has not questioned the validity of auction proceedings so as to contend that there is a violation of Section 150 and Section 14 etc.,. His



grievance is only to the extent that he is entitled to balance amount with reference to approximate value mentioned by the seizure authority in the seizure report. In the absence of challenge to the auction proceedings, the petitioner cannot contend that there is a violation of Section 150 of the Customs Act. It is also submitted that learned single Judge has committed error in Para 8 that no notice was given to the respondent before auction proceedings were undertaken.

17. In this regard, he has pointed out Para 6 to 9, reply to the counter affidavit in the present LPA to the extent that notice was issued and it was undelivered. The aforesaid contention of the respondent cannot be appreciated and so also order of the learned Single Judge for the reasons that respondent has not questioned the validity of auction proceedings.

18. It is further submitted that decisions cited on behalf of the respondent has no application to the case in hand. It is submitted that in the present case the respondent himself has given declaration that the value of the goods is sum of Rs. 8,59,125/- on 13.01.1999 and auction price is Rs. 7,04,416/- whereas the cited decision is not relating to concerned trader who has given declaration and material information relating to value of the goods while comparing with the approximate value determined by the



seizing authority. Therefore, the cited decisions on behalf of the respondent namely LPA No. 913 of 2003, LPA 813 of 2011 read with CWJC No. 10265 of 2011, LPA 928 of 2012 and SLP No. 12157 of 2011.

19. Heard the learned counsel for the respective parties.

20. Core issues involved in this *lis* are as under:

a) Whether writ petition is maintainable or not?

b) Whether respondent is entitled to refund of amount of sum of Rs. 8,59,125/- in terms of self declaration of respondent dated 13.01.1999 or, Rs. 21,68,100/- approximate value mentioned in the seizure report dated 22.01.1999 or, Rs. 7,04,416/- in terms of auction of goods amount dated 30.03.1999.

c) Whether learned Single Judge erred in holding that respondent is entitled to refund of amount of the seized betel nut goods and its auctioned sum of Rs. 21,68,100/- in terms of seizure report wherein seizure authority assigned approximate value of the seized betel nut goods.

d) The citation cited on behalf of the respondent assist his case in claiming of sum of Rs. 21,68,100/- or not?

e) Whether respondent petitioner can take shelter under Section 150 and Section 14 of the Customs Act, 1962



for the purpose of claiming approximate value assigned in the seizure report or not?

21. Having regard to the relief sought by the respondent – petitioner that he has prayed for writ of mandamus to the appellant – Department for release of balance of amount with reference to assigned approximate value of Rs. 21,68,100/- in the seizure report. For issuance of writ of mandamus respondent – petitioner has not made out that he has a statutory right to claim sum of Rs. 21,68,100/- minus whatever amount paid by the Department to him. Appellant – Department have settled the grievance of the petitioner while refunding sum of Rs. 7,04,416/- in terms of auction of betel nut goods and its realization amount. Therefore, one has to draw inference that respondent - petitioner is disputing that he is entitled to sum of Rs. 21,68,100/- instead of 7,04,416/-. Accordingly, the claim of the respondent - petitioner is disputed fact. Similarly, appellant - Department were also disputing that respondent - petitioner is not entitled to refund of sum of Rs. 21,68,100/- in terms of the seizure report for the reasons that seizure authority has approximately valued at Rs. 21,68,100/- and it is not in terms of any material information like what is the rate of betel nuts per kg or per ton with reference to marked value as on the date of seizure of the goods on 22.01.1999,



therefore, the learned Single Judge should have rejected the writ petition at threshold that disputed issues cannot be decided by the writ Court. Respondent – petitioner had a remedy before the Trial Court in adjudicating the matter.

22. Apex Court in the case of ***Shubhas Jain vs. Rajeshwari Shivam and Others*** reported in **2021 SCC Online SC 562**, in paragraph No. 26, it is held as under:

“It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts. It is not for the High Court to make a comparative assessment of conflicting technical reports and decide which one is acceptable.”

23. In the light of the aforesaid facts and circumstances read with the principle laid down by the Apex Court, writ petition filed by the respondent - petitioner is not maintainable for the reasons that there are three materials in respect of value of the seized betel nuts namely self declaration made by the respondent dated 13.01.1999 and he had valued at Rs. 8,59,125/- and the same amount is supported by Annexure – 3 series. On the other hand, approximate value has been assigned by the seizure of the goods authority on 22.01.1999 and it is valued at Rs. 21,68,100/-. The other value of the seized betel nut goods is sum of Rs. 7,04,416/-, this is in terms of auction of seized goods and its realization amount. The appellant – Department have restricted the refund at



sum of Rs. 7,04,416/- on the other hand respondent is demanding refund of sum of Rs. 21,68,100/-. Therefore, it is a clear case of disputed facts hence, writ petition is not maintainable, however, having regard to the fact that alleged incident relates back to of the year 1999 read with writ petition filed in the year 2005 and L.P.A. filed in the year 2011 and we are in the year, 2022, we thought that matter is warranted for giving *quietus*.

24. Respondent – petitioner cannot claim sum of Rs. 21,68,100/- in terms of the approximate value assigned by the seizure of the goods authority as the approximate value is not in terms of any material information. On the other hand, respondent – petitioner has given declaration that seized goods is worth about a sum of Rs. 8,59,125/- *vide* declaration dated 13.01.1999. Even though seized betel nut goods were auctioned at Rs. 7,04,416/-. At the best respondent – petitioner is entitled to amount in terms of to self declaration dated 13.01.1999 to the extent of sum of Rs. 8,59,125/-. Further, in terms of Annexure – 3 series which are receipts dated 19.01.1999, the receipts containing quantity and valuation of the betel nuts which are tallying with the self declaration value of Rs. 8,59,125/-. The respondent – petitioner cannot disown his self declaration of the valuation of the goods at Rs. 8,59,125/- and it is corroborated by further material *vide*



Annexure - 3 series dated 19.01.1999 (receipts). In the light of these facts and circumstances, at the best respondent - petitioner is entitled to self declared value at Rs. 8,59,125/- along with interest. Perusal of the records, it is evident that respondent petitioner has been extended a sum of Rs. 8,59,125/- along with 10% interest during pendency of the litigation, therefore, the respondent – petitioner is not entitled to refund of Rs. 21,68,100/- in terms of assigned approximate value of the seizure report dated 22.01.1999.

25. The learned Single Judge while allowing C.W.J.C. No. 2221 of 2005 dated 25.01.2011 has committed error in not noticing that there are disputed facts by either of the parties insofar as entitlement of refund. The learned Single Judge has not appreciated documents relating to self declaration of respondent – petitioner read with receipts dated 19.01.1999 (Annexure- 3 series.)

26. The cited decisions on behalf of the respondent like LPA 913 of 2003 decided on 25.10.2010, LPA 813 of 2011 decided on 31.08.2012, CWJC No. 10265 of 2011 decided on 02.03.2012, LPA 928 of 2012 decided on 20.07.2012 and, SLP No. 12157 of 2011 decided on 01.08.2011 are not assisting his grievance. Firstly, Courts have to examine factual aspects of the matter. In the present *lis*, having regard to the fact that respondent



– petitioner had self declared value of the seized goods at Rs. 8,59,125/- and further it is corroborated by receipts and petitioner cannot disown his own documents and rely on approximate value assigned by the Customs Authority at the time of seizure of the goods. Value of the betel nut goods is well known to the respondent - petitioner other wise he would not have executed self declaration read with the number of receipts (Annexure – 3 series). Based on factual aspects itself the petitioner is not entitled to have assistance of the aforesaid cited decisions. Even the cited decisions are distinguishable and the same are not applicable to the case in hand for the reasons that in the cited decisions matter is not relating to self declaration, material like receipts and realization of auction goods and its amount.

27. Section 14 and Section 150 of the Customs Act, 1962 reads as under:-

“14. Valuation of goods.-

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf :



Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for,-

(i) the circumstances in which the buyer and the seller shall be deemed to be related;

(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;

(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section :

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Explanation - For the purposes of this section -

(a) "rate of exchange" means the rate of exchange -

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;



(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).]

150. Procedure for sale of goods and application of sale proceeds

(1) Where any goods not being confiscated goods are to be sold under any provisions of this Act, they shall, after notice to the owner thereof, be sold by public auction or by tender or with the consent of the owner in any other manner.

(2) The proceeds of any such sale shall be applied--

(a) firstly to the payment of the expenses of the sale,

(b) next to the payment of the freight and other charges, if any, payable in respect of the goods sold, to the carrier, if notice of such charges has been given to the person having custody of the goods,

(c) next to the payment of the duty, if any, on the goods sold,

(d) next to the payment of the charges in respect of the goods sold due to the person having the custody of the goods,

(e) next to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs,

and the balance, if any, shall be paid to the owner of the goods."

28. The respondent - petitioner cannot have any assistance in terms of the aforesaid Sections for the reasons that he has not questioned the validity of the auction proceedings undertaken by the appellant – Department. As long as respondent – petitioner has not questioned the validity of the auction



proceedings, he cannot contend that there is a violation of Section 14 and Section 150 of the Customs Act, 1962.

29. In the light of these facts and circumstances, the appellant - Department have made out a *prima facie* case so as to interfere with the order of the learned Single Judge dated 25.01.2011 passed in C.W.J.C. No. 2221 of 2005 and the fact that during pendency of the present *lis*, the respondent petitioner has been extended a sum of Rs. 8,59,125/- along with 10% interest. Consequently respondent – petitioner is entitled to refund of sum of Rs. 8,59,125/- in terms of self declaration dated 13.01.1999 read with receipts dated 19.01.1999, since self declared value has been paid along with interest, nothing remains in the present *lis*.

30. Accordingly, order of the learned Single Judge dated 25.01.2011 stands set aside. L.P.A. is allowed.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

Abhishek/Aditya
GAURAV.S-

AFR/NAFR	
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