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WPA 19912 of 2021

M/s. Bari Udyog

Vs

Commissioner of Customs (Preventive) & Ors.

Mr. Supratim Dhar,

Mr. Varun Jash,

Mr. Dhananjay Nayak

... For the Petitioner.

Mr. K.K. Maiti,

Mr. Tapan Bhanja,

Ms. Aishwarya Rajyashree

... For the Customs Authority.

Mr. Arijit Chakrabarti,

Mr. Debaditya Banerjee,

Mr. Prabir Bera

... For the Private Respondent No.4.

Mr. Kaushik Dey

... For the DRI.

Heard learned Advocates appearing for the parties.

The petitioner being aggrieved by inaction on the part of the respondents/Customs Authorities concerned in releasing their vehicles in question in spite of repeated requests made by the petitioner to the respondents concerned in view of the fact, which is matter of record that the vehicles in question has not been seized under Section 110 of the Customs Act, 1962 and Section 110A of the Act cannot be invoked, which is the case of the respondents/Customs Authorities themselves, which is reflected from the letter dated 19th January, 2022 issued by the Deputy Commissioner of Customs, Head Quarters, Adjudication Section, addressed to the Deputy Commissioner, Basirhat. Copy of the said letter dated

19th January, 2022 has been filed in court, where view of the DRI, KZU in paragraphs 4 and 5 has been specifically quoted, which are quoted herein below :

- (a) “ It is agreed that the said vehicles, not being seized under Section 110 of CA, 1962. Section 110A of the Act cannot be invoked. However, since the Hon’ble Court had given order to Commissioner of Customs (Preventive), West Bengal for provisional release of the said vehicles and your good office had sought comments from this office, in this office’s letters, it was requested to your good office to consider the request of the vehicle owners, as deemed fit & proper.
- (b) Considering above, as the said vehicles are not under seizure, it is requested that the vehicles may please be released to the vehicles’ owners, after taking over the custody” of the seized goods”.

Mr. Maiti, learned Advocate appearing for the Customs Authorities is not in a position to deny that the vehicles in question of the petitioner are not under seizure and he has also submitted that the Customs Authorities are not coming in the way of releasing the vehicles in question and they are willing to release the vehicles in question but took a peculiar stand that the goods in question lying on the vehicles in question have been seized and the owner of the goods has to make arrangement for keeping the goods in question, who is respondent No.4 herein, and is represented by learned Advocate, Mr. Chakrabarti.

Mr. Chakrabarti submits that respondent No.4 has made series of representations and lastly on 25th January, 2022 requesting the Customs Authorities

concerned and DRI Authorities to intimate them Customs Bonded Warehouse, where goods in question is to be kept and the date and time.

Mr. Maiti, learned Advocate appearing for the Customs Authorities is also not in a position to deny the submission made by Mr. Chakrabarti about writing of series of the aforesaid letters. Question arises that in the dispute between the owner of the goods in question and the Customs and DRI Authorities, why the petitioner who is the owner of the vehicles in question will be victimized and made to suffer huge financial loss when there is a specific case of the Customs and DRI Authorities themselves that the vehicles in question have not been seized and there is no case against the said vehicles. In view of this admitted fact it can be held that detention of the vehicles in question is totally illegal and the Customs Authorities should be asked to compensate the petitioner for illegal detention of the vehicles in question without any proceeding against the vehicles and the petitioner, however, I am confining to the issue of release of vehicles in question in this writ petition.

Considering the submission of the parties and admitted facts which appears and established from record produced before the Court, it is crystal clear

that the vehicles in question release of which petitioner has asked for is not under any order of seizure and it also appears from record that the respondents concerned are themselves willing to release the vehicles in question, I am of the considered view that respondents cannot victimize the petitioner/vehicles owner and cause financial loss for no fault of the petitioner and if respondents authorities have any dispute at all with the owner of the goods in question lying on the vehicles in question they are free to take all lawful action against the owner of goods in question.

In view of the discussion made above this writ petition is disposed of by directing the Customs/DRI authorities concerned to release the vehicles in question within three days from the date of communication of this order.

It is clarified that this order is confined to the issue of release of the vehicles in question and in no way will effect any adjudication proceedings in connection with the goods in question and the respondents concerned are free to proceed with the adjudication proceedings and pass final order expeditiously.

With the above observations and directions, this writ petition, being WPA 19912 of 2021 is disposed of.

(Md. Nizamuddin, J.)

