IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Before:
The Hon'ble Justice Hiranmay Bhattacharyya

WPO 369 OF 2021

KARAN KUMAR ARORA
VS.
UNION OF INDIA AND ORS.

For the Petitioner	: Mr. Sukumar Bhattacharyya, Mr. Dipendra Nath Chander, Mr. S. Ghosh .....advocates
For the Respondent no. 5	: Mr. Pradeep Kr. Jewrajka , Ms. Pooja Jewrajka Ms. Jyoti Rauth ....advocates
For Union of India	: Ms. Jayita Dhar .... advocate
Heard on	: 30.03.2022
Judgment on	: 21.04.2022

Hiranmay Bhattacharyya, J.:

1. This writ petition has been filed for issuance of writ in the nature of mandamus directing release of the balance items of two lots of the delivery order dated June 11, 2021 and for other consequential reliefs.

2. The petitioner submitted his bid for e-tender cum e-auction which was floated by the Metals Scrap Trading Corporation limited (for short "MSTC"). The petitioner's bid was approved in respect of three lots including lot no. 2.0 and lot no. 5.0. The petitioner was requested to deposit the amount of security deposit which the petitioner did and MSTC also issued acceptance letter. Petitioner received a delivery order dated 11 June 2021 from MSTC with respect to lot no. 2 and 5. On June 21, 2021 petitioner received part delivery of lot no. 5.On June 22, 2021 lot no. 2 was partly delivered to the petitioner. The petitioner received another delivery order with respect to lot no. 2 and 5 from Century Plyboards wherein it was mentioned that the petitioner was required to produce BIS certificate in respect of item no. 9 namely 15 Watt LED Bulb of lot no. 5 and the cosmetic items of lot no. 2 are liable for destruction. Through an e-mail, petitioner was intimated that he is required to produce BIS certificate so far as the item no. 9 i.e. 15 Watt bulb of lot no. 2 is concerned and in respect of some item of lot no. 5 it was stated that authority is unable to release the said items without custom release order as they have already received destruction order.

3. Mr. Bhattacharya learned advocate for the petitioners contended that e-auction was held after compliance of all formalities. Petitioner became the successful bidder and made payment which was accepted by the concerned authority. By

referring to various clauses of the Disposal Manual 2019 (for short "the Manual") he contended that since the goods are sold in auction, the authorities cannot refuse to release the goods on the ground that BIS certificate is needed. He further submitted that the goods which were auctioned cannot also be directed to be destructed as the same is against the procedure laid down in the Manual.

4. The learned advocate for the respondent no. 5 referred to a letter issued by Assistant Drugs Controller and addressed to the Assistant Commissioner of Custom wherein the uncleared / unclaimed cosmetics in the container was directed to be disposed of/ destroyed. She further submitted that the goods can be released only upon receiving necessary clearance and directions from the customs authority.

5. The respondent 2 and 3 were, however, not represented at the time of hearing in spite of notice.

6. I have heard the learned advocates for the parties and considered the materials on record. The question that arises for consideration in the instant case is whether the respondent authority can refuse to release the goods to the successful bidder on the ground that BIS certificate is necessary or that the items are liable for destruction.

7. Section 48 of the Customs Act, 1962 deals with the uncleared cargo. Central Board of Indirect Taxes and Customs,

Department of Revenue published the Manual containing several circulars wherein procedure for storage and disposal of goods that are seized/ confiscated/unclaimed/uncleared and covered by time expired bonds have been prescribed. Chapter 5 of the said Manual contains the special provisions for unclaimed/ uncleared cargo, mishandled baggage and time expired bonded goods. The procedure for disposal of unclaimed/ uncleared cargo lying with the custodians is laid down in Circular no. 49/ 2018 – Customs dated 03.12.2018. This court finds that the said circular contemplates certain steps to be followed by the authorities prior to auction sale which are summarised hereinunder.

(i) The custodian of the custom station shall prepare a list of cargo lying unclaimed/uncleared in the bonded area and the Custom Station for more than 30 days from the date of arrival of such cargo in the Custom Station and sent the list to the jurisdictional Principle Commissioner/ Commissioner of Customs.

(ii) From the said list the Customs shall segregate shipment which are disputed/ stayed, shipments required to be retained for investigation/ adjudication/ court procedure etc. as well as the shipment which require license/ permission/ certification from Director General of Foreign Trade or any other department. The Customs shall also furnish to the custodian the details of shipment not to be included in the auction process.

(iii) Based on the intimation received from the customs, the custodian shall issue a notice to the importer advising him to clear the goods, within the time indicated in the notice failing which the goods will be placed in the public auction.

(iv) After drawing an inventory of the shipment which are not required to be retained by the customs, the custodian shall approach the jurisdictional Customs authorities seeking No Objection Certificate in respect of all consignments/ containers which are to be taken up for auction.

(v) The Customs shall thereafter examine the list and intimate to the custodian, details of the listed shipment which can straight away be taken up for auction as they do not require any regulatory clearances (NOC from FSSAI, Drug controller, Bureau of Indian Standards (BIS) etc.) or do not need any chemical analysis to identify the contents and fitness for consumption/usage.

(vi) In case regulatory clearances from agencies other than Customs are required or samples of the consignment are required to be chemically analysed to identify the contents and fitness for consumption/usage, the

Customs shall identify such requirement and intimate to the concerned custodian. The custodian will then approach the jurisdictional Customs Officer for assistance in obtaining regulatory clearance or chemical analysis as the case may be.

(vii) NOC for such consignment shall be issued by the Customs only after receipt of the required clearance/ result of chemical analysis from the concerned agency without which the concerned custodian shall not put the said consignment for auction.

8. From the procedures laid down in the said circular it is evident that in case of shipments which do not require any regulatory clearances or do not need any chemical analysis they can be straight away be taken up for auction. In cases where regulatory clearances from various agencies are necessary, No Objection Certificate for such consignments are issued only after receipt of the required clearances/ result of chemical analysis. The goods can be put to auction sale only after issuance of No Objection Certificate from the customs. Thus, once the consignments are taken up for auction it shall be deemed that such consignments either do not require any regulatory clearances /chemical analysis test or such regulatory clearances/ report of chemical analysis have been obtained. After the goods are being put up for auction the customs authorities or the custodian are estopped from

raising any objection that the goods which were auctioned require regulatory clearances or chemical analysis test to identify the fitness for consumption/usage as a ground for withholding the release of auctioned goods.

9. In the instant case MSTC issued the sale intimation letter dated March 5, 2021 informing the petitioner that three lots including lot no. 2.0 and lot no. 5.0 has been approved and the petitioner was directed to deposit a sum of Rs. 14, 88, 250/- (Rupees Fourteen lakh eighty eight thousand two hundred fifty) towards security deposit which the petitioner duly deposited and MSTC issued an acceptance letter. The petitioner was requested to deposit a further sum of Rs. 13,89,409 (Rupees Thirteen lakh eighty nine thousand four hundred nine) and Rs. 98,841 (Rupees ninety eight thousand eight hundred forty one) which the petitioner duly deposited. Thereafter, on June 21, 2021 petitioner received part delivery of lot no. 5 and on the next date he received part delivery of lot no. 2 without item no. 9 i.e. 15 watt LED Bulb. In the delivery order in respect of lot no. 2 in the remarks column it has been indicated that the aforesaid items cannot be released as BIS certificate is required. In respect of lot no. 5, in the remarks column of the self same delivery order it has been recorded that cosmetic items are liable for destruction.

10. In the case on hand, after closure of e-auction the petitioner deposited the amounts as directed by the authorities and the

delivery order was also issued in favour of the petitioner. Thus, the sale can be said to be concluded for all practical purposes as the petitioner duly complied with all the formalities on his part after closure of the auction. From the procedures laid down in the Circular issued by the customs it is evident that after holding auction, it is now too late for the authorities to contend that such items require either BIS certificate or are liable for destruction. Thus, this Court is of the considered view that objections raised as a ground for withholding release of the goods are frivolous and flimsy and thus, liable to be set aside and quashed.

11. This matter can also be looked into from a different angle. The effect of withholding release of the goods which were put to action after the sale had been confirmed is to withdraw the lots or the items in a lot from the tender. A co-ordinate bench of this court in *Bijoy Kumar Agarwal* (supra) held that there is no scope of withdrawal of any lot from the auction after the sale was concluded. Therefore, once the goods are put up for auction sale, a lot or any part thereof cannot be withdrawn thereafter.

12. No other objection has been raised by the respondent authorities for withholding the release of the goods. Since the petitioner has complied with all formalities, the respondent authorities are obliged to release the goods in question to the petitioner.

13. For the reasons as aforesaid the objections raised for withholding the release of goods are set aside and quashed. This court holds that the authorities are obliged to release/ deliver the balance items of lot no. 2 and 5 of the first delivery order dated June 11, 2021. Accordingly, WPO 369 of 2021 stands allowed. The respondents are directed to release the balance items of lot no. 2 and 5 of the first delivery order dated June 11, 2021 to the petitioner positively within a period of two weeks after an approach is made by the petitioner.

14. There shall be, however, no order as to costs.

15. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

Later:

Mr. K.K. Maiti, learned advocate appears today for the first time on behalf of the respondent Nos. 2 and 3 when this matter is called out for delivery of judgment. This writ petition was taken up for consideration on several occasions and none appeared for the respondents in spite of notice which has been recorded in this judgment. Mr. Maiti prays for stay of operation of the order passed by this court. The prayer for stay is considered and rejected for the reasons indicated in the judgment.

(Hiranmay Bhattacharyya, J.)

(P.A.- Sanchita)