IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.37266 of 2020

M/s. Lall Minerals Pvt. Ltd. & Another .... ***Petitioners***
Mr. Kishor Kumar Acharya, Advocate

-versus-

Union of India & Others .... ***Opposite Parties***
Mr. Radheyshyam Chimanka, Sr. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN

ORDER
15.12.2022

Order No.

06. 1. The present writ petition was filed on 22nd December, 2020 seeking quashing of an order dated 18th December, 2020 passed by the Inspector, Gopalpur Customs Division, Gopalpur detaining the vessel "MV MBA LIBERTY" under Section 110 of the Customs Act, 1962 on the ground that the Cargo was declared to have Fe content of below 58%, whereas upon testing it was found to be having Fe content of above 58%.

2. On 24th December, 2020, an interim order was passed by this Court noting that the Petitioners had furnished a Bank Guarantee (BG) to the extent of 35% of the provisional duty and on that basis, a direction was issued for release of the vessel with an undertaking by the Petitioner that in the event any custom duty is leviable after final assessment by following due procedure of law, the same shall be

recovered from the Petitioners after adjusting the amount already deposited by way of the BG.

3. It appears that pursuant to the above orders, the vessel in question sailed out on 25th December, 2020 after being detained for a period of nine days.

4. On 24th June, 2021 the Assistant Commissioner, Gopalpur Customs Division finalized the provisional assessment of the relevant shipping bill at 'NIL' Duty.

5. Learned counsel for the Petitioner now prays that direction should be issued to the Opposite Parties to pay compensation to the Petitioners for wrongful detention of the vessel for nine days and in support of such submission, reliance is placed on the decision in ***Rudul Sah v. State of Bihar (1983) 4 SCC 141***. In support of the plea that this Court should to continue to entertain the writ petition, reliance is placed on the decision in ***Worldline Tradex Pvt. Ltd. v. Commissioner of Customs (Import), 2016 (340) E.L.T. 174 (Del.).***

6. As regards the aforementioned prayer, the Court is of the view that it involves disputed questions of fact regarding the justification for detention of the vessel by the authorities. This is on account of the fact that the Petitioners have throughout been maintaining that there is no basis for the conclusion that the Fe content of the cargo was not in accordance with the declaration made by the Petitioners. This is of course contested by the Opposite Parties. On the side of the Petitioners, it is pointed out that the provisional assessment order dated 24th June, 2021 made no reference to any test report on the

basis of which the detention of the vessel was ordered in the first place. These contested issues can be best adjudicated in separate civil proceedings where evidence can be led by both parties in support of their respective contentions. Consequently, leaving it open to the Petitioners to seek appropriate remedies in accordance with law for the further grievances that the Petitioners may have, the writ petition is disposed of.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

MRS/Laxmikant