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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-331-2022

Date of Decision: 02.02.2022

UNION OF INDIA

…Petitioner

Versus

KULBHUSHAN JAIN AND OTHERS

…Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sunish Bindlish, Advocate
for the petitioner.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

Instant revision petition filed by Union of India is directed against the impugned order dated 09.09.2019 (Annexure P-3) passed by the learned Civil Judge (Junior Division), Rohtak, whereby an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 invoking Section 155 of the Customs Act, 1962 seeking rejection of the plaint, has been dismissed.

2. The petitioner, thereafter, assailed the aforesaid order by filing first appeal. However, the same too was dismissed vide order dated 04.10.2019 (Annexure P-8) observing that since the impugned order is not in the nature of final decree, therefore, the appeal is not maintainable.

3. Brief factual matrix as pleaded in the plaint is that the plaintiff/respondent imported a parcel from Australia with the self-declaration of it being valued as 180.85 $. Upon its arrival, the same was cleared after due examination by the custom officials on 05.04.2017. However, an examination report was prepared by the Examining Officer after the postal examination sheet, which as per the declaration of the

plaintiff himself read as “Coins & Stamps”. In view of the said declaration, without going any further into the veracity of the same, the Customs Officer based on the self-declaration, levied a custom duty of Rs.5,280/- on the declared value of the goods in accordance with what is pleaded by the petitioner. This was stated to be the applicable duty as per the provisions of the Customs Act, 1962 read with Customs Tariff Act, 1975 as well as notification No.608-A issued by the Customs Department since the value of the self declared goods was more than Rs.5,000/-. It was thus stated that being more than Rs.5,000/-, custom duty is leviable. In order to get the goods released, the plaintiff had to perforce pay the customs duty and thereafter, the postal parcel was delivered to the plaintiff at his given address. After receipt of his postal parcel, the plaintiff then filed a civil suit against the petitioner as well as the Chief Commissioner of Customs seeking damages/recovery of an amount of Rs.15,000/- *inter alia* alleging that the postal article was wrongly and illegally slapped with the levy of Rs.5,380/-. The plaintiff has been ever since pursuing his remedy before the trial Court. Even though, upon notice, the trial Court did not proceed any further other than the disposal of the application filed by the petitioner under Order 7 Rule 11 as aforesaid.

4. Requirement of issuing notice to the respondents is dispensed with given that the amount involved in the litigation herein too small (challenge to impugned customs order levying duty of Rs.5,380/-) so as to un-necessarily burden the respondent with the litigation cost before this Court.

5. Ordinarily, being conscious of the amount involved in the suit proceedings and the cost of litigation thereof, perhaps this Court would not

have entertained the revision petition given that the suit was filed way back in the year, 2017 and despite lapse of almost five years, it has not proceeded any further. However, having perused the provisions contained under Section 7 of the Customs Act, 1962, I am of the opinion that allowing the civil Courts to entertain suits challenging the levy of customs duty, even if wrongly levied, would set up a bad precedent. The Act *ibid* is self- contained code in itself and the remedy, if any against the so-called illegal order is by way of an appeal provided therein. Assuming that the Customs Officer had indeed passed a wrong order as has been alleged by the plaintiff, he ought to have approached the appellate authority as per the provisions of the Act *ibid*. For ready reference, Section 155 (*supra*) is reproduced here-in-below :

> "*1. No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Government or a local authority for anything which is done, or intended to be done in good faith, in pursuance of this Act or the Rules or regulations.*
> *2. Further, this Hon'ble Court does not have the territorial jurisdiction as the defendants are located at Delhi and the parcel has arrived at New Delhi and the duty was levied at Delhi Foreign Post Office. The defendants are discharging their official duties at New Delhi outside the territorial jurisdiction of their Hon'ble Court.*"

A perusal of the above leaves no manner of doubt that Civil Court's jurisdiction is barred in the matters of levy of customs duty, which is the case given herein.

6. Concededly, what has been challenged by way of Civil Suit is alleged to be wrong levy of customs and on account thereof, the petitioner has sought recovery of Rs.15,000/- labeling his claim as a suit for damages. The said relief cannot be granted without going into the veracity/legality of the orders passed by the Customs Officer.

7. In the premise, the impugned order dated 09.09.2019 (Annexure P-3) passed by the Court below is set aside. As a consequence thereof, the plaint filed by the plaintiff is directed to be returned to the plaintiff with liberty to approach the Appellate Authority under the Act *ibid*. It is, however, made clear that the time taken by the plaintiff to pursue his Civil Suit before the Court below shall be excluded while computing the limitation for filing the appeal, in case, the plaintiff chooses to approach the Appellate Authority.

8. Given the inordinate delay already caused in the disposal of the grievance of the petitioner, it is expected of the Appellate Authority that in case, an appeal is filed, the same shall be disposed of within a period of three months thereof.

9. However, liberty is given to the respondents to move appropriate application before this Court, in case, they are aggrieved by the instant order.

10. Disposed of accordingly

February 02, 2022 **(ARUN MONGA)**
gurpreet **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No