

01.12.2023
Item No.10
gd/ssd

MAT/397/2023
IA NO: CAN/1/2023, CAN/2/2023
TAUSIF ALAM
VS
UNION OF INDIA AND ORS.

Mr. Souradeep Majumdar,
Mr. Sumit Ghosh
..for the Appellant.

Ms. R.V. Kundalia,
Ms. Aishwarya Rajyashree,
Ms. Shivika Rajyashni,
Mr. Soumyadeep Dhar
..for the Customs Authority.

Re: CAN 2 of 2023

1. CAN 2 of 2023 has been filed by the appellant seeking condonation of delay of 4 days in filing this appeal.

2. Learned counsel for the appellant has referred to the explanation which has been furnished in the application and also has made submission in respect of the explanation for the delay.

3. We find that the delay in filing this appeal has been sufficiently explained and the appellant was prevented from filing the appeal within time on account of bona fide reason.

4. Hence, CAN 2 of 2023 is, accordingly, allowed. The delay in filing the appeal is condoned.

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5. By this intra court appeal the petitioner being dissatisfied with the order passed in the writ

petition has challenged the same by contending that the order passed by the Customs Authorities dated 16.02.2022 while disposing of the application of provisional release has imposed certain stringent conditions which are onerous and incapable of being complied with. So far as the vehicle which was seized, the same has been released to the appellant on 28.12.2021. The consignment which was seized are betel nuts and seizure took place on 01.09.2021.

6. The appellant would contend that at this juncture show cause notice cannot be issued because the time limit of six months has already elapsed and in this regard reference was made to Section 110 and Section 110A of the Customs Act, 1962. The appellant is precluded from raising such a point at this juncture because the appellant had sought for provisional release and when an order was passed on the said application, the appellant did not comply with the condition but stalled the proceedings by filing the writ petition.

7. Therefore, we are of the view that the appellant cannot contend that the goods have to be unconditionally released to the appellant.

8. The learned advocate for the appellant would submit that the betel nuts should be released.

9. We are not inclined to pass such an order considering the fact that betel nut is edible item and

the seizure took place on 01.09.2021 and at this juncture there may be likelihood that the betel nuts would have become unfit for human consumption.

10. Therefore, the only direction that can be issued to the authority is to issue show cause notice and commence and complete the adjudication proceedings at the earliest.

11. The learned standing counsel appearing for the respondent department submitted that already show cause notice was issued on 9th February, 2023.

12. In the light of the above, while affirming the order passed by the learned Single Bench, the appellant is granted liberty to submit his reply to the show cause notice within 30 days from the date of receipt of the server copy of this order. If the same is complied with, the adjudicating authority shall adjudicate the show cause notice after affording an opportunity of personal hearing to the authorized representative of the appellant and pass appropriate order on merits and in accordance with law.

13. Accordingly, the appeal stands disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)