

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13936-2023 (O&M)

Date of decision:11.09.2023

K.B.Tyres through its Karta Vijay Kumar Baweja

..... petitioner

Versus

Deputy Director, Directorate of Revenue Intelligence, Ludhiana and ors.

..... Respondents

**CORAM : HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ALOK JAIN**

Present :- Mr.Deepak Gupta, Advocate
for the petitioner

Mr.Sourabh Goel, Senior Standing counsel
for respondents No.1 to 3

Mr.Gurinderjit Singh, Senior Panel Counsel
for respondent No.4

ALOK JAIN, J. :

1. The present writ petition under Article 226 of the Constitution of India has been filed seeking issuance of a writ of certiorari, for quashing seizure memo dated 14.02.2023 (Annexure P-1) and further for issuance of a writ in the nature of mandamus directing the respondents to release the goods seized vide aforesaid memo.

2. Through this petition, challenge has been raised to the act and conduct of the respondents, whereby the goods purchased by the petitioner from an importer namely M/s Vinayak Creations have been seized.

3. Learned counsel for the petitioner submits that there is no privity of contract between him and the authorities and the said goods do not fall under the category of any “banned goods”. It is submitted that the provisions of Section 110 read with Sections 111 of the Customs Act, 1962 (for short, ‘the Act’), are absolutely clear, when read with the definition of “imported goods” under Section 2(25) of the Act, which read as under:

110. Seizure of goods, documents and things.—

(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

2 [(1A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

(1B) Where any goods, being goods specified under sub-section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of—

(a) certifying the correctness of the inventory so prepared; or 1. Ins. by Act 13 of 2018, s. 91 (w.e.f. 28-3-2018). 2. Ins. by Act 80 of 1985, s. 8 (w.e.f. 27-12-1985). 74

(b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or

(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

(1C) Where an application is made under sub-section (1B), the Magistrate shall, as soon as may be, allow the application.]

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

[Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:

Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.]

(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4) The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs.

[110A. Provisional release of goods, documents and things seized pending adjudication.—Any goods, documents or things seized under section 110, may, pending the order of the 3 [adjudicating authority], be released to the owner on taking a bond from him in the proper form with such security and conditions as the 4 [adjudicating authority] may require.]

111. Confiscation of improperly imported goods, etc.—

The following goods brought from a place outside India shall be liable to confiscation:—

(a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;

(b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;

(c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(e) any dutiable or prohibited goods found concealed in any manner in any conveyance; 1. Subs. by Act 13 of 2018, s. 92, for the proviso (w.e.f. 28-3-2018). 2. Ins. by Act 29 of 2006, s. 26 (w.e.f. 13-7-2006). 3. Subs. by Act 8 of 2011, s. 47, for —adjudicating officer|| (w.e.f. 8-4-2011). 4. Subs. by s. 47, ibid., for —Commissioner of Customs|| (w.e.f. 8-4-2011). 75

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an 1 [arrival manifest or import manifest] or import report which are not so mentioned;

(g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;

(h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

(k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(m) 2 [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 3 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];

(n) any dutiable or prohibited goods transited with or without transshipment or attempted to be so transited in contravention of the provisions of Chapter VIII;

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

(p) any notified goods in relation to which any provisions of Chapter IVA or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.

Section 2(25): imported goods means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

4. Learned counsel for the petitioner submits that the moment the goods are cleared for home consumption, they lose the status of being imported goods and hence could not have been confiscated. It is further submitted that the only ground for such an action was that the alleged importer had imported the said goods from the supplier at a lower price and hence evaded tax and for the said purpose, the authorities have already issued notice to the said importer. He further submits that in fact, to his knowledge as is evident from the documents, the said importer has already deposited excess tax of almost Rs.1 Crore against his various consignments and therefore, if at all, it is found that the said importer is liable to pay the said tax accrued due to under valuation, even then the same is duly cleared.

5. On the strength of the above, learned counsel for the petitioner has prayed that the writ petition be allowed and appropriate directions be issued to release the confiscated goods.

6. *Per contra*, learned counsel for respondents No.1 to 3 has taken us to the definition of “goods” which can be confiscated and emphasizes on Clause (m) of Section 111 of the Act, which reads as under:

Section 111 (m) [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 3 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];

7. Learned counsel for respondents No.1 to 3 has vehemently argued that the word used in the opening of this Clause is “any goods”.

Meaning thereby, the goods which have even been lost, its status as “imported goods”, can be confiscated. However, he was not able to demonstrate that the said goods do not fall under the category of being “banned” or against the public policy of the country. Learned counsel for respondents No.1 to 3 could also not deny the fact that the appropriate proceedings against the importer have been initiated and are pending.

8. We have heard learned counsel for the parties and have carefully gone through the case file.

9. As per definition under Section 2(25) of the Act, the term “imported goods” clearly changes the nature, once the same are cleared for home consumption. Admittedly, in this case, the goods were duly cleared in favour of the importer and were subsequently sold to the present petitioner for home consumption. Coupled with the above, the authorities have not challenged the sale made by the said importer in favour of the present petitioner. Therefore, the respondents were not within their rights to seize/ confiscate the said goods.

10. A perusal of the file also demonstrates that no notice was served upon the petitioner before such an action was taken, which also violates the principles of natural justice. It is not a case where the petitioner was dealing in some illegal or banned goods, which had to be confiscated but the authorities were always aware as to who was the importer of such goods and to whom the said goods have been sold by the petitioner. Although, any prior notice may not be mandatory under the provisions of law. However, where the goods are not banned or against any violation of any other law, a business transaction cannot be ruined at the whims and fancies of the respondents.

Merely because one of the importer was successful in clicking a deal for a lesser amount of price, cannot be a reason for such a bizarre action.

11. There is nothing on record to show that the price at which the said importer had imported the said goods was wrong and it may be a case that the other importers are purposefully importing the said goods on a higher price for higher profits. Fixation of price of the goods is absolutely relative and based on multiple factors, which two businessmen take a call before entering into an agreement. It is not a case where diamond worth Rs.100 Crores has been imported at Rs.100/- to avoid tax. However, in case it is found to be a fake diamond then probably Rs.100/- could also be a higher price.

12. Accordingly, the present petition is allowed. The seizure memo dated 14.02.2023 (Annexure P-1) is quashed and the respondents are directed to release the goods seized vide seizure memo dated 14.02.2023, forthwith. However, any observation or finding recorded in this order shall not be relied upon by any of the parties for the decision on the show cause notice issued by the department to the importer.

(RITU BAHRI)
JUDGE

(ALOK JAIN)
JUDGE

September 11, 2023
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Whether speaking/reasoned : Yes
Whether Reportable : No