

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

103

2023:PHHC:153627-DB

CWP-27054-2023

Date of Decision: 02.12.2023

Sandeep Kumar

.....Petitioner(s)

Versus

Commissioner of Customs, Ludhiana

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Mr. Chinmaya Seth, Advocate,
and Mr. A.K. Seth, Advocate,
for the petitioner.

Mr. Sourabh Goel, Sr. Standing Counsel,
and Ms. Geetika Sharma, Advocate,
for the respondent.

G.S.SANDHAWALIA, J. (Oral)

1. The present writ petition has been filed under Articles 226 and 227 of the Constitution of India and seek quashing of the notice dated 06.07.2022 (Annexure P-1) issued under Section 155(2) of the Customs Act, 1962 (in short 'the Act') and the consequent notice dated dated 22.08.2022 (Annexure P-2).

2. A perusal of the said notices would go on to show that the petitioner was working as an Inspector (Customs) (now placed under suspension) and had been posted at Focal Point, Dhandari Kalan, Ludhiana. On 09.04.2021, a container had been intercepted having the bill of entry dated 08.04.2021 in favour of M/s. P.S. Traders situated at Patiala. The goods declared as such were stated to be containing 14836 kgs of aluminium scrap. The result of the examination of the container found that there were 3960000 cigarettes of 4 different brands, 4 alloy wheels and 10030 kgs of metal scrap.

The consignment had apparently been cleared from the customs port at Ludhiana without conducting actual examination of consignment and even without breaking the Shipping Line Seal. In such circumstances, notice was issued on 06.07.2022 not only to the petitioner but also to the Superintendent Rambir Singh Gahlaut and, therefore, he was put to notice as to why proceedings under Section 112 and 117 of the Act be not commenced against him. The requisite one month's notice was issued in compliance of provisions of Section 155(2) of the Act. After the said period of one month, second notice dated 22.08.2022 (Annexure P-2) was also issued giving the details as show how the container as such had been cleared against the settled norms.

3. A perusal of the same would go on to show that apart from the petitioner, various other persons have been called upon to show cause under the Act. Further, it goes on to show that the petitioner was one of the noticees and was directed to file a written reply. Reference was also made to Section 124 of the Act which pertains to issuance of show cause notice before confiscation of goods and even granting an opportunity of filing a representation in writing before imposing any penalty. The noticees were also to state whether they wish to be heard in person or not.

4. No cause was shown within the stipulated time or within the extended time and the case was liable to be decided *ex parte*. The petitioner apparently took his sweet time in filing the reply a year later on 24.08.2023 (Annexure P-4) before the Additional Commissioner of Customs, Ludhiana wherein, he has taken various pleas on the ground that he has been falsely implicated. The delay as such is justified on the ground that legible copies have not been supplied, which is also mentioned in the reply as such. In reply to the show cause notice, various pleas have been taken that he made

entry in the EDI system in respect of the said bill of entry dated 08.04.2021. Further pleas have also been taken that show cause notice dated 22.08.2022 (Annexure P-2) is time barred as the incident had taken place on 09.04.2021.

5. In our considered opinion, the factual aspect has to be gone into by the authorities as to whether the petitioner was responsible for clearing the container alongwith his co-employee. Apparently, the fact remains that he was placed under suspension immediately, which is also conceded as such by the counsel for the petitioner, on the detection of the container having been cleared without following the procedure prescribed and the fact that the said container contained the goods which had not been declared. The larger issue thus, remains whether there was a conspiracy with the consignee and other persons. These are factual aspects which the writ Court will not go into. Since the reply has already been filed, we are of the considered opinion that it is for the authorities to take a decision on the above said show cause notices and it is not for the writ Court to entertain the petition of an employee who *prima facie* is guilty of eating the fence.

6. Accordingly, the present petition is dismissed at this stage without commenting upon the merits of the case leaving it open to the petitioner to take all his pleas before the authorities concerned.

(G.S. SANDHAWALIA)
JUDGE

02.12.2023
shivani

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
No