IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5427 of 2022

==

Santosh Kumar Murarka, Son of Late Bihari Lal Murarka, Proprietor of M/s Shree Shyam Agency, Resident of Ward No. 03, Basopatti East, Post Office and Police Station - Basopatti, District - Madhubani, Pin Code - 847225 (Bihar).

... ... Petitioner/s

Versus

1. The Union of India, through the Chief Commissioner of Customs (Preventive), 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
2. The Commissioner of Customs (Preventive), Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
3. The Joint Commissioner, Office of the Commissioner of Customs (Preventive) Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
4. The Assistant Commissioner, Customs (P) Division, Muzaffarpur.
5. The Superintendent, Land Customs Station, Jaynagar.
6. The Superintendent, (Disposal), Customs (P) Division, Muzaffarpur.

... ... Respondent/s

==

Appearance :

For the Petitioner/s : Mr.Saket Gupta, Adv.

For the Respondent/s : Mr.K.N. Singh, Addl. Solicitor General
Mr.Anshuman Singh, Sr. S.C. Customs
Mr.Devansh Shankar Singh, AC to ASG
Mr.Abhijeet Gautam, AC to ASG

==

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 08-08-2024

In the instant petition, petitioner has prayed for the following reliefs :

"a) Quashing/Setting aside of Seizure Memo dated

19.06.2021 seized by the Superintendent of Land Customs Station, Jaynagar in connection with Unit Case No. 25/21-22 (Annexure-05) whereby

i. 150 Tins of "Naga Ji" Blended Edible Vegetable Oil weighing 15 liters in each tin.

ii. 10 cartons containing 4 jars of "Naga Ji" Blended Vegetable Edible Oil weighing 5 litres each.

iii. 30 cartons containing 4 jars of "Do Phool" Blended Vegetable Edible Oil weighing 5 litres each.

iv. 30 cartons containing 30 pouches of "Do Phool" Blended Vegetable Edible Oil weighing ½ litres each.

v. Mahindra Pick Up bearing Registration No. BR 07GB 5187, have been seized for alleged violation of Section 7, 11, 50 and 51 of the Customs Act, 1962 read with Section 3 of the Foreign Trade (Development & Regulation) Act, 1992 also CGST Act, 2017.

b) Direction to respondents to release the seized goods (Edible Oil) which has been seized by seizure dated 19.06.2021 during the pendency of the writ application unconditionally.

c) Restraining the respondents from taking any coercive action against the petitioner in connection with Seizure Memo dated 19.06.2021.

d) Direction to respondents to pay adequate compensation for harassing & traumatizing the petitioner duet o illegal seizure dated 19.06.2021.

e) For any ad interim order in terms of prayers above.

f) For any other direction, which your Lordships may deem fit and proper in the facts and circumstances of the case.

2. Petitioner is owner of the seized goods which are narrated in Annexure-5, it is called seizure memo dated 19.06.2021. These goods were stated to be under transit from Sitamarhi to Dubhi (Indo-Nepal Border). It was seized by the customs authorities and seizure memo has been prepared. Provisionally, the aforementioned goods were released under bank guarantee/security and it was subject to adjudication of the matter by the customs department.

3. Petitioner has assailed the seizure memo and action of the customs department on the ground that under section 110 of the Customs Act, 1962 the words incorporated in the aforementioned section is "reasons to believe". This has not been incorporated in the seizure memo by the seizing officer. In support of the aforesaid contention, petitioner has relied upon circular dated 08.02.2017 (Annexure-7). In para-4 thereof, three ingredients were required to be fulfilled by the seizing authority namely, Panchnama, clearly mentioning the "reasons to believe" that goods are liable for confiscation. The other clause is not relevant for the present case. In support of the aforementioned

contention, he has relied on the co-ordinate Bench decision in the case of ***Om Sai Tranding Company & Anr. Vs. Union of India & Ors.*** reported in ***(2020) 1 P.L.J.R. 297*** (Para- 7, 12, 18 and 19). It is further submitted that for transportation of seized goods petitioner had valid documents which have been produced as Annexure-2 (series) and Annexure-3 (Invoices). In not complying section 110 of the Customs Act by the seizing authority, the impugned action of the respondent at Annexure-5 dated 19.06.2021 is liable to be set aside.

4. Per contra, learned counsel for the respondent resisted the aforementioned contention and submitted that Panchnama has been placed on record along with the counter affidavit at Annexure-R/3. It is also submitted that quoting of relevant provision which the petitioner is alleged to have violated suffice to fulfill the condition of "reasons to believe" assigning reasons for seizure. On this point, learned counsel for the respondent relied on the decision in ***M.A. No. 528 of 2022 (The Commissioner of Customs (Preventive) Patna Vs. Sh. Rajendra Sethiya)*** in *Para-13***.**

5. It is further submitted that at the time of seizure at 21.00 hrs. on 19.06.2021 the petitioner could not produce any document in respect of transportation of seized material. On the

other hand, only one paper chit has been furnished which has been placed on record at Annexure-R/1. Therefore, petitioner has to face the adjudication before the customs authorities and prove that the seized goods were under transit with genuine material documents and other ancillary related papers like tax invoice and other things.

6. Heard learned counsels for the respective parties. Before adverting to the subject matter, it is necessary to reproduce Section 110 of the Customs Act, 1962 and clause 4 of the circular dated 08.02.2017. They are reproduced as under :

Section 110 of the Customs Act, 1962

"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.

[(1-A) 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

[underline supplied]

proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

(1-B) Where any goods, being goods specified under sub-section (1-A), 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

(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.

(1-C) Where an application is made under sub-section (1-B), the Magistrate shall, as soon as may be, allow the application.] [Inserted by Act 80 of 1985, Section 8 (w.e.f. 27.12.1985).]

(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.] [Substituted by Finance Act, 2018 (Act No. 13 of 2018), dated 29.3.2018.]

(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."

Clause 4 of the circular dated 08.02.2017

"In view of the above, in all future cases, the following may be adhered to :

** Whenever goods are being seized, in addition to panchama, the proper officer must also pass an appropriate order (seizure memo/order/etc.) clearly mentioning the reasons to believe that the goods are liable for confiscation.*

** Where it is not practicable to seize any such goods, the proper officer may service 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. In such cases, investigations should be fast-tracked to expeditiously decide whether to place the goods under seizure or to release the same to their owner."*

[underline supplied]

7. “Reasons to believe” words incorporated under section 110 of the Customs Act, 1962 has been interpreted by this Court in the case of ***Om Sai Tranding Company*** (cited supra) and it was subject matter of litigation before the Hon’ble Supreme Court, however, having regard to the facts of the case interpretation of “reasons to believe” has not been examined and it was left over to be examined in some other cases. Para-4 of the circular dated 08.02.2017 stipulated that at the time of seizure Panchnama was required to be drawn clearly mentioning the reasons to believe that goods are liable for confiscation.

8. The co-ordinate Bench in ***M.A. No. 528 of 2022 (The Commissioner of Customs (Preventive) Patna Vs. Sh. Rajendra Sethiya)*** in *Para-13, it is held as under :*

> *“13. With this bare and simple admitted facts, we first look at the valuation carried out by the Department on interception and detection of goods, which is at page 73 of the appeal memorandum. The valuation was done by a government registered valuer and it indicates markings on both the gold bars, which are as follows: -*
> ***“Valcambi Suisse (995) CHI Essayeur Foundeur”***
> *These markings available in both the gold bars; found on the person of the employee of the respondent, intercepted by the DRI officials. The gold bars, with the recital thereon, is admitted to be that entrusted by the respondent to his employee; the person intercepted. The seizure memo of 24.07.2017, which was prepared at the*

DRI Regional Unit Patna Office, clearly indicated violation of Sections 7, 46 and 47 of the Act, as the reasons to believe. Section 7 speaks of appointments of customs ports, airports etc. Section 46 requires entry of goods on importation by presenting a bill of entry for home consumption or warehousing as prescribed and Section 47 speaks of clearance of goods for home consumption. Hence, the reason to believe is very clear from the violations alleged and in the present case, there can be no challenge to the goods being sourced from outside the country, which is evident from a mere visual inspection; the Swiss markings were crystal clear to even a layman who does not have any expertise in the matter. The gold bars apparently, from the mere inspection were not sourced from India.

9. Taking note of the judicial pronouncement in respect of reasons to be assigned, it would suffice if the provision of law is cited, which is alleged to have been violated suffice the reasons.

10. Learned counsel for the petitioner submitted that he had produced documents in the office of the customs department, therefore, the transportation of seized goods were genuine and there was no occasion for the customs department to seize the goods. The aforementioned contention is disputed by the official respondents to the extent that at the time of seizure of goods at 21.00 hrs on 19.06.2021 the driver

of the vehicle was not carrying the relevant documents like invoice and other ancillary related papers, he was carrying only one chit which has been placed on record at Annexure-R/1.

11. There is disputed issue as to whether driver of the vehicle had produced relevant documents at 21.00 hrs. on 19.06.2021 or not. In fact, at para 13 of the writ petition, petitioner has admitted that documents have been produced in the office of customs department, therefore, one has to draw inference that driver of the vehicle was not carrying the documents in respect of transportation of seized goods and other ancillary papers. Further, RUD-05 E-way Bill generated on 19.06.2021 9.26 pm and seizure is at 9.30 pm on 19.06.2021, some alleged discrepancies are reflected. Be that as it may, under Article 226 Court cannot examine disputed issues among the parties.

12. In view of these facts and circumstances, petitioner has not made out a case. Accordingly, the present writ petition stands dismissed.

13. However, petitioner is hereby directed to cooperate with the customs authorities to give quietus to the adjudication which are pending consideration before the

concerned authority while customs authorities are hereby directed to provide ample opportunity to the petitioner and they may expedite the matter and decide the same within a reasonable period of time of six months.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

mcv/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	14.08.2024
Transmission Date	