

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6377 of 2015

1. Raj Kumar Agrawal, Son of Late Phoolchand Agrawal, resident of Ganpatganj, P.S.- Raghapur, District- Supaul, Bihar
2. Ranjit Kumar Pansari, son of Late Radha Krishna Pansari, resident of Simrahi Bazar, P.S.- Raghapur, District- Supaul Bihar

... .. Petitioner/s

Versus

1. The Union of India through Commissioner of Customs (Preventive) 4th floor, Central Revenue Building, Patna
2. The Joint Commissioner,(Adjudication), Custom (P) Head Quarters, Patna
3. The Assistant Commissioner, Customs (Preventive) Division Farbisganj, District- Farbishganj
4. The Superintendent Land Customs Station, Bhim Nagar, Supaul, District Supaul, Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Prabhat Ranjan, Advocate
For the Respondent/s	:	Dr. K.N. Singh, ASG
		Mr. Anshuman Singh, Sr. SC, CGST & CX
		Mr. Devansh Shankar Singh, Advocate
		Mr. Shivaditya Dhari Sinha, Advocate
		Mrs. Nivedita Nirvikar, Sr. Advocate
		Mr. Ranjay Kumar, Advocate
		Mr. Satya Prakash Tripathy, Sr. SC.

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-07-2024

The petitioners in the above writ application are aggrieved with the seizure of goods and the adjudication order passed, bearing No. 64-Cus/JC/Denovo/FBG/2014 dated 13.03.2015, produced at Annexure-11.

2. Learned counsel for the petitioners pointed out that



the reason for seizure or detention was not the ground on which the adjudication proceedings were initiated; which vitiates the seizure. Section 100 of the Customs Act, 1962 requires 'reasons to believe' for making seizure of goods. In the present case, the seizure was made purportedly for violation of provisions of Notification No. 9/96 (N.T)-Cus dated 22.01.1996, issued under Section 11 of the Customs Act. The notification was with respect to import of goods into India from Nepal; goods which have been imported into Nepal from other countries. However, the show-cause notice and the adjudication order proceeded on the basis that there was illegal export attempted by the petitioners. The goods seized was sugar which has not been notified under Section 11 of the Act. Further, the petitioners had specifically sought for cross-examination of the officer who made the seizure, which request though recorded in the adjudication order, was not permitted.

3. Reliance was placed on ***Chairman-cum-Managing Director, Coal India Limited and others v. Ananta Saha and others; (2011) 5 SCC 142*** to contend that when the foundation itself is removed, i.e. the seizure is vitiated, the superstructure falls. If the 'reason to believe' is found to be not valid then necessarily there can be no valid seizure or further adjudication



on the basis of the invalid seizure. *Andaman Timber Industries v. Commissioner of Central Excise, Kolkata-II; (2016) 15 SCC 785* was relied on to emphasize that the right to cross-examine a witness before the adjudicating authority is fundamental to the principles of natural justice.

4. Learned Standing Counsel for the Department, from the counter affidavit filed, pointed out that earlier the petitioners had approached this Court and they were relegated to the statutory authority. There is a statutory remedy of appeal available to the petitioners, which the petitioners have not chosen to avail. It is also submitted that as per the export policy, sugar can be exported by a merchant, importer/exporter only after obtaining an export release order from Chief Director (Sugar) i.e. through export licensing.

5. The seizure receipt, as produced at Annexure P/1, in the column for 'reasons for seizure or detention' indicates violation of provisions of Notification No. 9/96 (NT) Cus dated 22.01.1996. The said notification relates to the following:-

“Goods which have been exported to Nepal from countries other than India except machinery and equipment used in Nepal for the execution of a project may be allowed to be imported into India from Nepal after completion of the project subject to the conditions specified in Notification No. 9/96-Cus., dated 22-1-1996.”



6. Obviously, the specific notification is with respect to import into India of goods or products which have been first imported into Nepal. The show-cause notice issued is produced at Annexure-3. Contrary to the reason indicated for seizure, the show-cause notice is for illegal export in violation of the provisions of the Customs Act read with Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 and notification issued thereunder. The final adjudication order is also based on the finding of an illegal export.

7. 'Reason to believe', as declared in ***Sheo Nath Singh v. Appellate Assistant Commissioner of Income Tax, Calcutta; (1972) 3 SCC 234***, suggest a belief which is honest and one which a reasonable person arrives at based upon reasonable grounds. It cannot be a mere suspicion or gossip or rumour. We specifically extract Paragraph 10 of the decision hereunder:-

“10. In our judgment, the law laid down by this Court in the above case is fully applicable to the facts of the present case. There can be no manner of doubt that the words “reason to believe” suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income Tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income Tax Officer would be



acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The Court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the Court.”

(Underlining by us for emphasis)

8. The ‘reason to believe’ hence is the foundational aspect which enables seizure and initiation of an adjudication proceeding. In the present case we have seen that the ‘reason to believe’ is illegal import while the adjudication has proceeded on the allegation of illegal export. Even the counter affidavit speaks of export of sugar having been regulated by licence. We find the foundational aspect to be absent in the above proceedings; which would enable invocation of the extraordinary remedy under Article 226, as has been held in **State of H.P & Ors. v. Gujarat Ambuja Cement Limited & Anr.; (2005) 6 SCC 499.**

9. In the cited decision, the Hon’ble Supreme Court has held that if an assessee approaches the High Court without availing the alternate remedy, it should be ensured that the assessee has made out a strong case or that there exists good grounds to invoke the extraordinary jurisdiction. While reiterating that Article 226 of the Constitution confers very wide powers on the High Court, it was clarified that nonetheless the



remedy of writ is an absolutely discretionary remedy. The High Court, hence, can always refuse the exercise of discretion if there is an adequate and effective remedy elsewhere. The High Court can exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or due procedure required for the decision has not been adopted. The High Court would also interfere if it comes to a conclusion that there is infringement of fundamental rights or where there is failure of principles of natural justice or where the orders and proceeding are wholly without jurisdiction or when the vires of an Act is challenged.

10. It is pertinent that by reason of the above contradiction in the seizure and the show-cause notice, the petitioners had specifically sought for cross-examination of the Inspector of Customs who seized the goods. The same has been recorded in the adjudication order but there is nothing to show that such cross-examination was permitted. Going by the dictum in *Andaman Timber Industries* (supra) we also have to find that there is violation of principles of natural justice by reason of the denial of cross-examination of the seizing officer, especially on the contradiction coming out from the seizure memo and the show-cause notice.



11. There is clear lack of jurisdiction in so far as the adjudication proceedings initiated on the ground of ‘illegal export’ when the seizure was on the belief that there is ‘illegal import’. The request for cross-examination of the seizing officer hence assumes relevance and the denial to summon the officer is a clear violation of principles of natural justice. Both these aspects justify the invocation of the extraordinary remedy under Article 226 of the Constitution of India.

12. The writ petition hence stands allowed setting aside the impugned order. If any security was provided for release of goods, the same shall be released, and if any amounts are paid, it shall be refunded.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

P.K.P./-

AFR/NAFR	
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