IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18104 of 2017

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Manoj Kumar Singh son of Shri Janak Prasad Kushwaha at Bharatipur, Circle - Patelpur, District - Vaishali, Bihar.

... ... Petitioner/s

Versus

1. The Union Of India and Ors
2. The Commissioner Appeal Custom and Central, Excise 2nd Floor, Central Revenue Building, Birchand P
3. Assistant Commissioner, Custom P Division Muzaffarpur, Bihar.
4. The Superintendent of Custom P, Circle - Sitamarhi District - Sitamarhi.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dhananjay Kumar, Advocate
For the Respondent/s	:	Dr. K. N. Singh, ASG
		Mr. Anshuman Singh, Sr. SC, Custom

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-02-2024

The writ petition agitates the cause of an illegal seizure of goods and vehicle by the Customs Superintendent, Sitamarhi. According to the petitioner, who was the owner of the vehicle, his driver was transporting jack fruit in his brand new pick-up van bearing Registration No. BR 06 CA 2518. The 26 bags of jack fruit were purchased from Tajpur Sabji Mandi at Motipur and was proceeding to the Surshand Market for sale.

2. Suspecting the goods to be taken for sale outside the country, to Nepal, the Customs Superintendent detained the vehicle with the goods. The driver of the petitioner then filed a complaint under the SC and ST Atrocities Act before the Court of learned Chief Judicial Magistrate, Samastipur. It is stated that cognizance was taken but, the learned counsel for the petitioner was not able to inform us the stage at which the complaint is or whether the same has been disposed off. In any event, the complaint filed is not relevant for consideration of the issue of illegal seizure, which is the contention raised herein.

3. The goods in the vehicle was sold by the Customs Superintendent and the request made by the petitioner to release the vehicle was rejected by the authority. It was argued before the authorities that jack fruit does not fall under dutiable goods and hence there was no reason to seize the vehicle. Time and again representations were made for release of the vehicle, which was not considered by the respondent-authorities.

4. The appellant then filed C.W.J.C. No.15295 of 2012, which admittedly, was dismissed as withdrawn with liberty to file a fresh petition. Then C.W.J.C. No.16486 of 2012 was filed in which Annexure-5 judgment dated 07.09.2012 was passed. By Annexure-5, a learned Single Judge of this Court found that there is no reason for provisional release of the vehicle to be ordered by this Court. Learned counsel for the respondent pointed out Section 110A, which enables the petitioner to file an application for provisional release of the vehicle before the Commissioner, Customs. The learned counsel for the petitioner agreed to do so and in such circumstances, the writ petition was disposed of, granting liberty to the petitioner to make such an application, which was also directed to be considered and disposed of on merits; expeditiously.

5. On the directions issued, the Superintendent issued Annexure-6 communication to the Commissioner specifically pointing out that the value of the vehicle, as submitted by the applicant himself was Rs.3,01,897/-. An order of provisional release was passed by Annexure-8 directing deposit of Rs.90,000/-, which was less than one-third of the price of the vehicle, as admitted by the petitioner himself. The petitioner did not take release of the vehicle and filed a further writ petition before this Court.

6. Annexure-A9 is the order passed by yet another Single Judge in C.W.J.C. No.985 of 2013. The earlier proceedings filed were noticed; the first writ petition being withdrawn and the second writ petition having been disposed of with liberty to seek provisional release. Again, the learned counsel for the petitioner sought for raising all contentions before the appropriate authority, upon which the writ petition stood dismissed, with liberty reserved.

7. In the meanwhile, an order was passed at Annexure-10 confiscating the vehicle. An appeal was filed which was dismissed by order dated 24.09.2014 produced along with Annexure-12, for reason of delay occasioned. Again a writ petition was filed as C.W.J.C. No.21854 of 2015 which was withdrawn, as is seen from Annexure-13. An appeal before the Customs & Excise Appellate Tribunal also stood rejected by Annexure-14 finding that the first appeal was filed beyond the statutory period provided for condonation of delay under Section 128 of the Customs Act, 1962.

8. We have looked at the original order passed by the authority, which is produced as Annexure-10. But for stating that the vehicle was seized while it was proceeding to the border, separating India and Nepal, there is nothing stated as to whether jack fruit was dutiable or not. The learned Standing Counsel had produced an extract of the Customs Tariff, specifically Chapter 7 dealing with ('Edible vegetables, certain roots and tubers).

9. The description of goods also shows various types of vegetables and the learned counsel specifically refers to Tariff Item No.0710 80 90 under Tariff Item 0710, which is extracted hereunder :-

0710	Vegetables (uncooked or cooked by steaming or boiling in water), frozen:			
[illegible]	- Potatoes	kg	30%	[illegible]
	- Leguminous vegetables, shelled or unshelled:			
[illegible]	-- Peas (Pisum sativum)	kg	30%	[illegible]
[illegible]	-- Beans (Vigna spp., Phaseolus spp.)	kg	30%	[illegible]
[illegible]	-- Other	kg	30%	[illegible]
[illegible]	- Spinach, New Zealand spinach and orache spinach (garden spinach)	kg	30%	[illegible]
[illegible]	- Sweet corn	kg	30%	[illegible]
[illegible]	- Other vegetables:			
[illegible]	-- Tarragon	kg	30%	[illegible]
[illegible]	-- Others	kg	30%	[illegible]
[illegible]	- Mixtures of vegetables	kg	30%	[illegible]

10. We do not find any reason to bring in jack fruit within an edible vegetable or as a root or tuber nor can it be brought under 0710 looking at the various sub-entries made thereunder. The principle of *ejusdem generis* does not commend us to find jack fruit to be similar to those vegetables mentioned under the above extract. In the above circumstances, we set aside the order passed by the original authority on the finding that the seizure itself was illegal since the vehicle did not contain any dutiable goods.

11. We are now concerned with the relief to be granted in the appeal. We have been told that the pick up van was sold for a total amount of Rs.38,000/- as early as on 12.11.2018. As we noticed earlier, on an application of the petitioner, a provisional release was ordered as on 12.12.2012 for release of the vehicle on deposit of Rs.90,000/-. If the petitioner had obtained the release of the vehicle necessarily, the amounts deposited would have been refunded with interest. The petitioner despite having invited a provisional release, did not comply with the direction therein. Repeated writ petitions were filed before this Court and were either withdrawn or got disposed off with liberty to approach the appropriate authority. The petitioner is solely responsible for the vehicle having been sold much later in the year 2018. The petitioner having not obtained provisional release, as per the order issued on his own application, there is no reason to award any interest to the petitioner.

12. The respondent-authority shall refund the amount of Rs.38,000/- within a period of 3 months from today. If the amounts are not refunded within that time, then necessarily, it shall carry interest at the rate of 9% from the date of expiry of the 3 months stipulated herein above.

13. The appeal stands allowed with the above directions, setting aside Annexure-10 order of confiscation.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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CAV DATE	
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