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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 10.04.2024

\+ **W.P.(C) 5248/2024 & CM APPLs. 21525-26/2024**

YAMAL MANOJBHAI JAGADA ..... Petitioner

Versus

CHIEF COMMISSIONER OF CUSTOMS & ORS.... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Karan Bharihoke and Mr. Ashish Batra, Advocates.

For the Respondents: Mr. Sandeep Vishnu, SPC for UOI with Mr. Madhav Suri and Ms. Sangita and Ms. R.S. Jolly, Advocate.
Mr. Satish Aggarwala, Senior Standing Counsel, Indirect Taxes, Department of Revenue.

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks a direction to respondent No.2, Commissioner of Customs to expeditiously adjudicate Show Cause Notice dated 31.03.2023 issued under Section 124 of the Customs Act, 1962 (hereinafter referred to as the 'Act').

2. Learned counsel for petitioner submits that petitioner was arrested at the Airport and the arrest was approved by an officer at the rank of Commissioner of Customs. Subsequently, the arrest was impugned by filing a writ petition. Petitioner also applied for provisional release of the articles seized. Thereafter, petitioner approached the Settlement

Commission and the Supreme Court wherein the respondent, "Commissioner of Customs" was made a party.

3. The contention of learned counsel for petitioner is that in all those proceedings, an affidavit was filed by the Commissioner of Customs taking a stand not only on the legal aspects but also the factual matrix of the case and since the Commissioner of Customs has filed an affidavit taking a stand, any officer below the rank of Commissioner of Customs would be bound by such stand and would not be able to impartially adjudicate the Show Cause Notice dated 31.03.2023.

4. Learned counsel further submits than an application seeking provisional release of the seized goods has been filed under Section 110A of the Act, which is pending before an officer at the rank of Commissioner of Customs. He further submits that a communication has been sent to the Chief Commissioner of Customs on 08.12.2023 and 18.12.2023, requesting that the Show Cause Notice be adjudicated by an officer not below the rank of Commissioner of Customs.

5. It is in these circumstances that it is contended that the Show Cause Notice be adjudicated by an officer not below the rank of Commissioner of Customs.

6. Learned counsel for petitioner fairly concedes that officers of the rank of Additional Commissioner of Customs and above upto the rank of Commissioner of Customs are competent and empowered to adjudicate the Show Cause Notice. He, however, submits that in view of the peculiar

facts and circumstances of the present case, the Show Cause Notice datd 31.03.2023 should be adjudicated by an officer not below the rank of Commissioner of Customs.

7. We are unable to accept the contention of learned counsel for petitioner.

8. Subject Show Cause Notice dated 31.03.2023 has been issued by Additional Commissioner of Customs (Airport & General). It is not disputed by the petitioner that the said officer has the power and competence to decide the Show Cause Notice. The only argument raised by the petitioner is that the case of the petitioner is peculiar and as such an officer now below the rank of Commissioner of Customs should adjudicate the same.

9. The only factor to show peculiarity is that the petitioner was arrested at the Airport and the arrest was authorized by Commissioner of Customs. Further, it is contended that in the litigation that enured prior to the issuance of the Show Cause Notice, an affidavit was filed by Commissioner of Customs.

10. We do not find that the so-called facts as contended by the petitioner amount of any peculiar facts and circumstances warranting any transfer of jurisdiction.

11. Section 104 of the Act dealing with power of arrest, empowers Principal Commissioner of Customs or Commissioner of Customs, by a

general or special order, to arrest any person whom he has reason to believe has committed an offence punishable under Section 132, 133, 135, 135A or Section 136 of the Act. Petitioner was alleged to have committed an offence under Section 132 and 135 and the arrest of the petitioner was done under the order of Commissioner of Customs.

12. It may also be noticed that the Central Board of Excise and Customs by its Notification dated 19.06.2015 has clarified the ambiguity, that then existed, with regard to the procedure to be adopted by field formation in matters relating to representation of cases before the High Court on behalf of Union of India. Said notification mandated that it would be an officer of the rank of Commissioner who would file an affidavit and who would represent the custom authorities in such proceedings.

13. It is the case of the petitioner that it is in terms the said circular that the Commissioner of Customs was impleaded as a respondent in the proceedings initiated by the petitioner.

14. Since the Commissioner of Customs was impleaded, in terms of the said Circular, it was the Commissioner of Customs, who was authorized to file an affidavit. Accordingly, we are of the view that mere fact that Commissioner of Customs has filed an affidavit would not denude an officer, otherwise empowered under the Act and the Rules and Notifications, to issue and adjudicate a Show Cause Notice even though the officer may be below the rank of the Commissioner of Customs.

15. We notice that the case of the petitioner is far from peculiar/unique

as there are several cases where arrests are made for infraction of the above-referred provisions under orders issued by Commissioner of Customs, which are challenged and proceedings initiated prior and post issuance of Show Cause Notices.

16. Accordingly, we are of the view that there are no peculiar facts and circumstances in the case of the petitioner for us to hold that an officer below the rank of Commissioner of Customs is denuded of the power or authority to adjudicate the Show Cause Notice.

17. In the instant case subject Show Cause Notice issued on 31.03.2023 has been issued by a competent and authorized officer whose competence and authority is not under challenge by the petitioner.

18. We may further note that since neither the competence, nor the authority of Assistant Commissioner of Customs, who has issued the Show Cause Notice, is under challenge, the petitioner cannot seek a direction to the Commissioner of Customs to adjudicate the Show Cause Notice.

19. In view of the above, we do not find any merit in the petition. The petition is consequently dismissed.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 10, 2024
NA