IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6201 of 2020

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1. Bishal Roadways, having its registered office at 236, Don Bosco Road, Mangaldoi Gaon, Darrang, Assam through its authorized signatory Shyama Kant Choudhary, aged about 47 years, male, son of Late Shri Ram Choudhary, resident of Lok Nath Para, P.S. Dalkola, District Uttar Dinajpur, West Bengal.
2. V.S. Enterprise, having its Registered Office at Nam Doboka Gaon, Doboka, District Nagaon, Assam through its Proprietor Biren Sah aged about 48 years, male, son of Late Kadam Lal Sah, resident of village Gangar Ghose, P.S. Baisi, District Purnea, Bihar.

... ... Petitioner/s

Versus

1. The Union of India through the Commissioner of Customs, (Preventive), 5th floor, Central Revenue Building, Birchand Patel Path, Patna.
2. The Additional Commissioner cum Adjudicating authority, Office of the Commissioner of Customs, (Preventive), 5th floor, Central Revenue Building, Birchand Patel Path, Patna.
3. The Assistant Commissioner cum Incharge, Integrated Anti Smuggling Unit, Customs (Preventive) Division, Muzaffarpur, Bihar.
4. The Inspector, customs (Preventive) Division Muzaffarpur cum Seizing Officer, Office of the Anti Smuggling Unit, Customs (Preventive) Division, Muzaffarpur, Bihar.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Prabhat Ranjan, Advocate
For the Respondent/s : Mr.S.D. Sanjay (Ad SG)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 25-08-2020

Heard Mr. Prabhat Ranjan, the learned counsel for the petitioner and Dr. K.N. Singh, Sr. Adv., learned A.S.G. for the Union of India, duly assisted by Shri Anshuman Singh, Adv., Sr. Standing Counsel for the Customs.

The present writ petition has been primarily filed for release of the seized goods and the truck, though the action of the respondent Custom authorities in initiating the seizure vide Muzaffarpur Unit Case No. 19/2019-20 dated 25.01.2020 has also been challenged.

The learned counsel for the petitioner has submitted that the respondent Custom authorities have seized 304 bags, containing 20,520.00 kgs. of betel nuts as also the truck in question, which is also apparent from the seizure memo dated 25.01.2020. It is submitted that the goods and the truck are lying under the open sky, hence are likely to decay and perish, hence it would be appropriate that the same are released for which the petitioners are ready to approach the respondent Custom authorities and furnish cash and bank guarantee. The learned counsel for the petitioner has also feebly submitted that the very initiation of the seizure proceedings as also the confiscation proceedings are ultra vires the provisions of the Custom Act, 1962, hence are required to be quashed.

Per contra, the learned Additional Solicitor General of India, Dr. K.N. Singh, assisted by Shri Anshuman Singh, Advocate, appearing for the respondents, has raised a preliminary objection with regard to the maintainability of the present writ petition at the instance of the writ petitioners inasmuch as one Shri Shyama kant Choudhary appears to have been authorized by the petitioner no. 1 i.e Vishal Roadways to file this petition, however, he has not disclosed as to in what capacity and in what manner he has been authorized to file the present writ petition and pray for release of the vehicle/ goods in question. It has been stated that a letter was sent for verification of the registration of the vehicle in question to the R.T.O., Lucknow and a bare perusal of the letter sent by the Registering authority, in reply, shows that the name of the owner of the vehicle in question is Shri Amit Mishra and the fact is that he has never filed any application for provisional release of the vehicle in question nor he appears to have authorized anyone for making application for release of the vehicle in question. It is also submitted that the said Shri Amit Mishra, upon interrogation, has disclosed that he has got no knowledge, either about the consigner or the consignee nor he has admitted to have ever authorized anyone much less the transporter for either filing the present writ petition or seeking release of the vehicle in question, thus admittedly the transporter is not the owner of the vehicle and no application has been filed by the owner, before the respondent Custom authorities, for release of the vehicle in question, hence the present writ petition at the instance of the petitioner no. 1 is not maintainable inasmuch as

Section 110A of the Customs Act clearly lays down that any goods, documents or things seized under section 110, may, pending the order of the adjudicating officer, be released to the owner on taking a bond from him in the proper form with such security and conditions as the Commissioner of Customs may require but in the present case the petitioner no. 1 is not the owner, hence provisional release of the vehicle cannot be made at his instance.

The Ld. ASG has further submitted that the present writ petition is also not maintainable at the instance of the petitioner no. 2, who has claimed for release of the seized goods, since the said Biren Sah has never filed any application before the respondent authorities claiming ownership or seeking release of the seized betel nuts. Even in the present writ petition there is no statement to the effect that Biren Sah had made any application before the Custom authorities for release of the seized goods. It is further submitted that a team of Integrated Anti Smuggling Unit (IASU), Muzaffarpur had visited the place in question to trace out the vehicle in question and after observing due legal formalities and having reasonable belief that the consignment being carried in the truck pertains to betel nuts of foreign origin, the truck was seized in accordance with law vide seizure Memo dated 25.01.2020. It is stated that on the Form-M dated 14.01.2020, stamp of DMRC, Darrang, is present and the name of the trader has been mentioned as M/s. V.S. Enterprises whereas the name of the buyer, to whom it has been sold, has been mentioned as “SELF TO OUTSIDE STATE” and the name of the seller from whom it has been purchased has been mentioned as Tangla Market, Udalguri, Assam, however on the contrary, in the so-called tax invoice, purportedly issued by M/s. V.S. Enterprises and produced by the driver of the truck, the name of the purchaser has been written as M/s. M.M. Enterprises, Arya Pura, Sabji Mandi, Delhi-110007 but the license number on the said Form-M is blank and the signature of the trader is missing. Moreover, the driver of the said truck has also disclosed that the goods were loaded at a godown sharing boundary with C.R.P.F. camp, Tangla on one side and gas agency on the other side and he had not gone to Udalguri for loading on 21.01.2020 whereas the Form-M shows that the goods in question were purchased from Tangla market, Udalguri, Assam and loaded on the truck on 21.01.2020, which is self contradictory and shows that the entire transaction is suspicious and dubious. It is also submitted that the case in question is under investigation and the transporter as also the consigner of the present case have not turned up at the office of the deponent despite three summons having been issued to them, although subsequently Shri Biren Sah proprietor of M/s. V.S. Enterprises had come to the office of the deponent for recording of his statement under Section 108 of the Customs Act, 1962 on 05.03.2020 but had left the proceedings without intimating or obtaining permission, hence the recording of his statement remained incomplete, whereafter a letter was sent to him for the purposes of completing his statement but he has not turned up yet. It is thus apparent that the petitioners are not co-operating with the Department and the issue of ownership of the goods is still to be determined and adjudicated inasmuch as the accounts statement of both the Banks of Shri Biren Sah does not support the transaction made by him and C.D.R. reflects that at the time of dispatch of goods, he was in West Bengal and not in Assam. It is also submitted that after the goods in question were brought to the office of the deponent, a thorough verification of the documents and goods was conducted, the driver of the truck was interrogated, trade opinion was obtained and keeping in view the status of the documents, recovered/presented, and having reasons to believe that the goods i.e. the betel nuts/areca nuts are liable to confiscation under the Customs Act, the same were seized along with the vehicle, under Section 110 of the Customs Act, 1962. Lastly, it is submitted that Areca Nut Research & Development Foundation, Bangalore has reported in its analysis report that the betel nuts seems to be of Indonesian origin, hence it cannot be said that the seizure was not based on reasonable belief.

As regards release of the seized goods/vehicle, the Ld. ASG has submitted that the Department has framed its own scheme, which has been issued by way of a circular, which contains the procedure and the requisite conditions required to be fulfilled for the purposes of provisionally releasing the seized goods as also the truck in favour of the owner of the goods and truck. It is thus submitted that the respondent Custom Department is not for a moment canvassing before this Court that the goods and truck in question would not be released whereas the stand of the respondent Custom Department is that the same would definitely be released subject to the owner of the goods/ truck approaching the respondent Custom authorities and furnishing the requisite security and cash /bank guarantee.

The learned counsel appearing for the petitioner has got no objection, however, he submits that a time frame be fixed for the purposes of release of the goods/truck in question.

Nonetheless, the learned counsel for the petitioner has urged before this Court that this Court may adjudicate the issue of the very initiation of the seizure and confiscation proceedings, since the same are ultra vires the provisions contained in the Custom Act, 1962.

I have heard the learned counsel for the parties and gone through the materials on record as also considered the submissions made by the learned counsel for the respective parties. This Court finds that since there is no disagreement amongst the parties regarding release of the goods/truck in question, I deem it fit and proper to grant liberty to the owners of the goods/truck in question to approach the respondent Custom authorities by filing appropriate application for provisional release whereupon the respondent Custom authorities shall release the same in accordance with their scheme/circular and upon the owners of the goods/truck furnishing adequate security, cash and bank guarantee. It is made clear that immediately upon furnishing of the security/cash & bank guarantee by the owners of the goods/truck in question, the respondent Custom authorities shall provisionally release the goods/truck in question within a period of 24 hours therefrom.

As regards the issue as to whether the initiation of the seizure/ confiscation proceedings is or is not ultra vires the provisions contained in the Custom Act, 1962, this Court finds that allegations and counter allegations have been levelled from both the sides and in fact the respondent Custom authorities, in their counter affidavit filed before this Court, have raised the issue regarding the very maintainability of the writ petition in its present form and have alleged non-cooperation by the petitioners during the course of investigation as also have placed materials on record to show that the petitioners have not approached this Court with clean hands, thus disentitling them from any relief under the equitable and discretionary jurisdiction of this Court under Article 226 of the Constitution of India, however, this Court is not going into the merit of the imputations since the same would prejudice the case of the petitioners herein and it would suffice to state that since the investigation is going on and is in a nascent stage, any interference in the seizure proceedings would have the effect of hampering and stifling proper investigation and adjudication. The investigation cannot be nipped in the bud and be prevented simply on the basis of certain technicalities. The Customs Act provides unfettered power to investigate where there are reasons to believe that there has been infraction of the provision of the Customs Act. Reference in this connection be had to the Judgments rendered by the Hon'ble Apex Court in the case of State of West Bengal v. Swapan Kumar Guha & Ors., reported in (1982) 1 SCC 561, in the case of S.N. Sharma v. Bipen Kumar Tiwari & Ors., reported in (1970) 1 SCC 653, Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, reported in (1988) 1 SCC 692 and in the case of Radhey Shyam Khemka and Anr. v. State of Bihar, reported in (1993) 3 SCC 54.

Considering the facts and circumstances of the case and for the reasons mentioned herein above in the preceding paragraphs, this Court is of the view that since the material on record prima facie indicates suspicious and dubious transaction as also a serious challenge has been made by the respondents with regard to the maintainability of the present writ petition, it would be proper not to delve on the merits of the case since the same may cause prejudice to the owners of the goods/vehicle, hence I deem it fit and proper to grant liberty to the petitioners to raise all the issues raised herein, in the present writ petition, before the respondent Custom authorities at an appropriate stage and accordingly, direct the respondent Custom authorities to consider the same in accordance with law, as and when raised, and pass appropriate orders expeditiously. It is expected that the investigation and the adjudication proceedings emanating therefrom, if any, shall be completed within a period of six months from today.

With the aforesaid directions/observations the writ petition stands disposed off accordingly.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.09.2020
Transmission Date	