IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6202 of 2020

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1. 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.
2. 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.

... ... 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, Forbishganj Customs (Preventive) Division, Forbishganj, Bihar.
4. The Inspector, (Preventing) cum Seizing Officer, Forbishganj Customs Division, Forbishganj, 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 Anshay Bhadhur Mathur, 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 Seizure Case dated 27.01.2020 has also been challenged.

The learned counsel for the petitioner has submitted that the respondent Custom authorities have seized 311 jute bags, containing 21,511.870 kgs. of betel nuts as also the truck in question, which is also apparent from the seizure memo dated 27.01.2020. 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 Anshay Bhadhur Mathur, Advocate appearing for the respondents, has raised a preliminary objection with regard to the maintainability of the present writ petition inasmuch as one Biren Sah has claimed to be the proprietor of the firm M/s. V.S. Enterprises (Petitioner No. 1), however, on verification of the documents, the same have been found to be fabricated and the credentials of Biren Sah shows that he is not the owner of the goods in question. Moreover, it has also been found that both the consigner and consignee have fabricated the documents and do not actually physically exist. It is further submitted that no application for release, either of the truck in question or the seized betel nuts has been filed till date and the driver of the truck in question, in his statement recorded under Section 108 of the Customs Act, has stated that the truck belongs to one Pankaj Singh, resident of Ekta Nagar, Lucknow and on 24.01.2020, he was telephonically informed by the truck owner to talk to a transporter for transportation of betel nuts, whereafter one person had guided him to Dimakutchi, Tangla, where he had loaded areca nuts from a godown. The said Driver has further stated that he was informed that he will be given the papers subsequently and will have no problem on the way, whereafter the transporter had provided him with the documents. The said driver has also disclosed that he was not provided with the address, where the consignment of betel nuts was to be delivered and was merely told that when he reaches Delhi, then the transporter will inform him about the address of the consignee, as such he is not having any information or knowledge about the consignment note. The

Ld. ASG has further submitted that the documents in question are fabricated and no valid papers have been shown so as to show that the betel nuts in question are not of foreign origin, hence seizure was made on 27.01.2020. In fact summons were issued to the petitioner no. 1 on the address mentioned in the tax invoice, whereafter a person namely Biren Sah had appeared and his statement was recorded under Section 108 of the Customs Act wherein he has stated that he had sold the betel nuts to one M/s. Zodica Trading @ of Rs. 130 per kg, totalling to a sum of Rs. 29,71,605/- and E-way bill was prepared in the name of M/s. V.S. Enterprises. In fact upon investigation, the Deputy Commissioner of State Tax, Nagaon Zone, Nagaon, vide his letter dated 06.03.2020, has intimated that the business premises of M/s. V.S. Enterprises, as declared at the time of registration, is not in existence and the said firm is traceless. In fact a team had also reached at the address mentioned in the tax invoice at Pranav Kutir on 17.02.2020 and upon enquiry about M/s. V.S. Enterprises and its proprietor, the house owner had made a signed statement that Biren Sah had taken a room on rent on 01.02.2020 but he does not stay there and moreover no rent agreement has been prepared till date. The said person also disclosed that he has got no information about any kind of business of Biren Sah. It is also stated that a summon was also issued to the consignee named in the tax invoice namely M/s. Zodica Trading Company, Sonia Vihar, New Delhi vide letter dated 12.02.2020, however, the summon has returned back undelivered. A summon was also sent to the transporter and subsequently one Pankaj Kumar Singh had appeared before the authority whereafter he had filed an application for release of the vehicle and ultimately upon verification from the transport authority, an order has been passed for provisional release of the vehicle in question vide order dated 15.06.2020.

The Ld. ASG, has thus submitted that till date the ownership of the betel nuts has not been established and the petitioner no. 1, who is represented by Biren Sah is apparently not the owner of the betel nuts. It has also been stated that the said Biren Sah has never approached the respondent authorities by filing any application for release of the betel nuts in question inasmuch as he has not been able to prima facie prove his credentials either regarding his business or regarding the ownership of the betel nuts in question.

As regards the release of 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 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 and in fact an order dated 15.06.2020 has already been passed for provisional release of the vehicle in question, after one Pankaj Kumar Singh had appeared before the respondent authority and had filed an application for release of the vehicle, this Court deems it fit and proper to grant liberty to the owner of the goods in question to approach the respondent Custom authorities by filing appropriate application for provisional release of the aforesaid goods, whereupon the respondent Custom authorities shall release the same in accordance with their scheme/circular and upon the owners of the goods 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 in question, the respondent Custom authorities shall provisionally release the goods 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	