IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10672 of 2019

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1. Bikaner Assam Road Lines India Ltd. through its Director Sushil Kumar Daga, aged about 50 years, Male, Son of Sri Bhawar Lal Daga, at present residing at of H B Road, Fancy Bazar, P.S. Paan Bazar, Districg-Gauhati (Assam)
2. Surana Trading Company through its Proprietor Kamal Kumar Surana, aged about 62 years, Male, Son of Late Jorawarmal Surana, R/o Village-Chengra Bandha, P.S. Chengra Bandha, District-Cooch Behar (West Bengal)

... ... petitioners

Versus

1. The Chief Commissioner of Customs Central Revenue Building, Beer Chand Patel Path, Patna
2. The Commissioner of Customs (Preventive) 5th floor, Central Revenue Building, Beer Chand Patel Path, Patna
3. The Commissioner of Customs (RRA) Central Revenue Building, Beer Chand Patel Path, Patna
4. The Assistant Commissioner (Preventive) Head Quarters, Patna
5. The Superintendent of Customs (Preventive) Circle, Jerath Compound, Main Road, Hinoo Ranchi, Jharkhand

... ... Respondent/s

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Appearance :

For the petitioners	:	Mr.Prabhat Ranjan, Advocate
For the Respondent/s	:	Dr. K.N. Singh, ASG
		Mr. Anshuman Singh, Sr. SC, Custom
		Mr. Shivditya Dhari Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 08-01-2025

In the instant petition, petitioners have prayed for the following relief:

> *"(i) Quashing of the Adjudication Order No. 02-Cus/ CC/DRI/Denovo / 2017 – 18 dated 08.05.2017 (Annexure 7) passed by the Commissioner of Customs (Preventive), Patna*

in connection with Customs Case bearing C No. VIII (10) 14-Cus/CC/DRI/ 08 whereby;

(a) 31104 kgs. of Betal Nut valued at Rs. 31,12,000/- has been confiscated Under Section 111 (a) and Section 111(d) of the Customs Act, 1962; and

(b) A penalty of Rs. 2 lakhs has been imposed Under Section 112(b) (1) of the Customs Act, 1962;

(ii) Quashing of the consequential Letter No. 1142 dated 08.04.2019 issued by the Superintendent (Respondent No. 5) directing the petitioners to pay the redemption fine and penalty in compliance of the adjudication order dated 08.05.2017;

(iii) Restraining the respondents from giving effect to the Adjudication Order No. 02-Cus/CC/DRI/Denovo/2017-18 dated 08.05.2017 during the pendency of the instant Writ Application."

2. The brief facts of the case are that *Supari* goods were alleged to have been seized on the score that the petitioners were alleged to have involved in illegal transportation of *Supari* goods. The truck was seized on 06.12.2007 by D.R.I., thereafter, proceedings have been drawn in so far as seizure on 18.12.2007 by D.R.I Officials**.** Show cause notice by D.R.I was issued on 26.05.2008, thereafter, adjudicating order was passed by the Commissioner on 05.12.2008. The Department, feeling aggrieved by the adjudicating order of the Commissioner-Committee, preferred appeal before CESTAT and a final order was passed on 16.12.2016. In the final Order No. 75331-40 of 2016 matter was remanded to the adjudicating authority. Resultantly, adjudicating authority has passed order on 05.12.2018. CESTAT order dated 16.12.2016 was subject matter of MA No. 25 of 2017 on behalf of the petitioners, it was dismissed on 18.09.2016 read with 18.12.2018 order of the Coordinate Bench. Thus, the petitioners are aggrieved by the adjudicating authority's subsequent order dated 05.12.2018 and presented this writ petition.

Submissions on behalf of the petitioners:-

3. Learned counsel for the petitioners submitted that before the adjudicating authority on behalf of the Customs Presenting Officer should have been appointed and to present the case on behalf of the Customs Department before the adjudicating authority. On the other hand, adjudicating authority has taken a *suo motu* and it is not permissible. In this regard, he has cited decision of the Hon'ble Supreme Court in the case of ***Union of India vs. Ram Lakhan Sharma*** reported in ***2018 7 SCC 670*** (para 13, 28 and 34).

4. It is further submitted that adjudicating authority proceeded to pass order with reference to Section 111(a) read with 111(d) of Customs Act 1962 (for short Customs Act, 1962). It is submitted that reading of sub Section 28 of Section 2 of Act, 1962 and it relates to Indian Customs Water. Resultantly, Section 111(a) and 111(d) of Customs Act 1962 are not attracted. Therefore, there is a total non application of mind on behalf of the adjudicating authority. It is also submitted that adjudicating authority has taken note of petitioners' defence reply submitted by the notices on 07.07.2008 through their advocate. However, each of the contention has not been dealt with by the adjudicating authority. Even though such a defence reply is pursuant to the earlier proceedings. However, once adjudicating authority is taking note of a certain material information irrespective of whether it is a prospective defence reply or an earlier defence reply. It was bounden duty of the adjudicating authority to consider each of the defence reply stated against the notices dated 07.07.2008 to that effect there is a non application of mind. It is also submitted that adjudicating authority has relied on a number of decisions at page 108 and 109 and it is behind the back of the petitioners. Before passing such order, authority should have apprise the petitioners stating that the matter is similar to that of judicial pronouncements. In other words, petitioners have not been provided an opportunity to counter the citations quoted at page 108 and 109 of this writ petition.

Submissions on behalf of Respondents:

5. The learned counsel for the respondents raised a preliminary objections to the extent that writ petition is not maintainable in view of the fact that petitioners have statutory remedy of appeal before the appellate authority. It is further submitted that reading of para 3 of the writ petition read with the supporting affidavit of the petitioners, affidavit has been restricted to first petitioner and it is not on behalf of second petitioner. Resultantly, second petitioner's writ petition is not maintainable.

6. It is further submitted that the petitioners have suppressed the disposal of MA No. 25 of 2017 by the Coordinate Bench on 18.12.2018, while affirming the CESTAT order dated 16.12.2016 and it is also submitted that D.R.I. has not been arrayed as necessary and proper party. On merits no other contentions urged.

Considerations:-

7. Heard the learned counsels for the respective parties.

8. Facts narrated *supra* are not disputed by either of the parties. Preliminary objection raised by the respondents to the extent that writ petition is not maintainable in view of the fact that the petitioners have statutory remedy of appeal before the appellate authority. It is to be noted that adjudicating authority has not applied his mind to the facts of the case and so also non consideration of petitioners' contention in the defence reply submitted by the notices (petitioners). That apart there is a non application of mind insofar as deciding the proceeding and pass order with reference to Section 111(a) and 111(d) of Customs Act read with sub Section 28 of Section 2 of Customs Act. Facts of the case would not fit into the aforementioned provisions like Section 111(a) and 111(d) read with sub Section 28 of Section 2 of the Customs Act. Therefore, it is a clear case of non application of mind. Even though, petitioners have statutory remedy of appeal, however, having regard to the aforementioned legal lacunae read with the Hon'ble Supreme Court decision in the case of ***M/s Godrej Sara Lee Ltd. vs. the Excise and Taxation Officer-cum-Asssessing Authority and Ors.*** Reported in ***2023 SCC OnLine SC 95*** (para 4, 5, 6, 7, 8 and 9). Para 6 reads as under:

> "**6.** *At the end of the last century, this court in paragraph 15 of its decision reported in (1998) 8 SCC 1 (Whirlpool Corporation v. Registrar of Trade Marks, Mumbai) carved*

out the exceptions on the existence whereof a writ court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under :

(i) where the writ petition seeks enforcement of any of the fundamental rights ;

(ii) where there is violation of principles of natural justice ;

(iii) where the order or the proceedings are wholly without jurisdiction ; or

(iv) where the vires of an Act is challenged."

9. Petitioners need not exhaust alternative remedy. In the light of the aforementioned principle the present writ petition is maintainable accordingly, preliminary objection submitted on behalf of the respondents stands rejected.

10. Learned counsel for the respondents submitted that the petition is required to be restricted to only first petitioner in view of the defect in not narrating the factual aspects of the petitioner at para 3 read with the affidavit to the extent that affidavit is not on behalf of second petitioner. It is too technical, therefore, the same cannot be taken note of in so far as rejection of the second petitioners' petition in view of the fact that common impugned order has been passed by the Adjudicating Authority vide order dated 05.12.2018.

11. Non disclosure of MA 25 of 2017 may be true, but non disclosure of of MA 25 of 2017 would not materially change the petitioners' grievance in view of the fact that subject matter of MA 25 of 2017 is in respect of CESTAT order dated 16.12.2016. CESTAT order dated 16.12.2016 resulted in passing of fresh adjudicating order on 05.12.2018. It is to be noted that CESTAT order dated 16.12.2016 merges with the impugned order dated 05.12.2018. Therefore, CESTAT order dated 05.12.2018 is required to be adjudicated in the present writ petition. Hence, the aforementioned objection insofar as non disclosure of the dismissal of MA No. 25 of 2017 is too trivial in nature.

12. Non-arraying D.R.I as a necessary and proper party is concerned, it is to be noted that the petitioners have not assailed any action of the D.R.I. on the other hand, what has been challenge is adjudicating authority order dated 05.12.2018. In view of these facts and circumstances, the preliminary objections raised on behalf of the respondents stands rejected.

13. Respondents could not apprise as to why the adjudicating authority fail to consider each of the contention taken by the petitioners in their defence reply submitted by the notices (petitioners) dated 07.07.2008 which has been taken note of by the adjudicating authority. They have also not apprised why the adjudicating authority is relying on Section 111(a) and Section 111(d) in the adjudicating order dated 05.12.2018. When reading of Sub Section 28 of Section 2 of Customs Act and it relates to Indian Customs Water has nothing to do with the present case on factual aspects of the matter. Therefore, there is a total non application of mind on behalf of the adjudicating authority while passing order on 05.12.2018. Learned counsel for the petitioners submitted that adjudicating authority passed order with reference to various citations at page 108 and 109 of the writ petition without giving an opportunity to the extent that adjudicating authority would rely on judicial pronouncements so as to enable an opportunity to the petitioners to counter the same. Therefore, there is a total non application of mind in not providing opportunity before relying on any documents like citations. Hon'ble Supreme Court laid down certain principles as to how quasi judicial order is to be passed in the case of ***Oryx Fisheries Private Limited Versus Union of India and Others*** reported in **(2010) 13 SCC 427**. Para 40 reads as under:

> "40. In Kranti Associates this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment which are set out below :

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
(b) A quasi-judicial authority must record reasons in support of its conclusions.
(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.
(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
(g) Reasons facilitate the process of judicial review by superior courts.
(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.
(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice

delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harv. L. Rev. 731-37.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain, EHRR at p. 562, para 29 and Anya v. University of Oxfords, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, 'adequate and intelligent reasons must be given for judicial decisions'.

(o) In all common law jurisdictions judgments play a vital role in setting up

> precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process'."

14. Adjudication authority failed to take note of the aforementioned principles while passing quasi-judicial order. Learned counsel for the petitioners submitted that Presenting Officer is required to be appointed before the adjudicating authority to present the case on behalf of the Customs department against the petitioners. He has relied on decisions cited (supra) in the case of ***Union of India vs. Ram Lakhan Sharma.*** Reading of Section 122 read with 124 of Customs Act 1962, there is no provision for appointment of Presenting Officer on behalf of the Customs Department before the adjudicating authority against any aggrieved person. The principle laid down in the aforementioned decision is in respect of departmental inquiry against government servant/employee. In those disciplinary regulations there is a provision for appointment of Inquiring Officer and Presenting Officer and the Inquiry Officer should be neutral and to adjudicate the departmental inquiry. The same principle is not applicable in view of the fact that there is no specific provision under Section 122 and 124 of Customs Act 1962. Therefore, the aforementioned contention of the petitioners stands rejected.

15. In view of these facts and circumstances, the petitioners have made out a case so as to interfere with the adjudicating authority's order dated 05.12.2018 and it is set aside and the matter is remanded to the adjudicating authority to decide afresh within a period of six months from the date of receipt of this order. Petitioners are hereby directed to cooperate with the adjudicating authority in deciding the matter. All the contentions are left open to be urged before the adjudicating authority by either of the parties.

16. Accordingly, writ petition stands allowed.

(P. B. Bajanthri, J)

(Ashok Kumar Pandey, J)

Sudhanshu/-
Durgesh/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	