IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Ct.551 **15.12.25**

Item No.18 Sws.M

WPA 22302 of 2025

Ksut Industries Limited
Vs
Principal Commissioner of Customs (Port), West Bengal, Customs House & Ors.

Mr. Abdul Hamid Molla
Mr. Sahil Hamid
Md. Abdul Halim
Mr. Biswadeep Dey
...for the petitioner

Mr. Kaushik Dey
Mr. Tapan Bhanja
....for the customs authority

1. This writ petition alleges arbitrary action on the part of the respondent-customs authorities in not releasing the petitioner's goods ([962 bags of white rice (non-basmati)] that had been seized by them on February 5, 2025.

2. Mr. Molla, learned advocate appearing for the petitioner submits that the respondents/customs authorities after seizing the petitioner's goods as aforesaid, issued a notice to show-cause on August 4, 2025 but they did not propose to confiscate of the petitioner's goods. It is submitted that since the show cause notice issued by the authorities did not propose confiscation of the goods and only envisioned imposition of monetary penalty, therefore during pendency of the adjudication proceedings the goods

so seized by the customs authorities should be released in favour of the petitioner unconditionally.

3. Mr. Dey, learned advocate appearing for the respondents/customs authorities submits that after the seizure of the petitioner's goods and prior to the issuance to the notice to show-cause, the petitioner had made a request before the respondents-customs authorities for release of the seized goods provisionally.

4. Attention of this Court is invited by Mr. Dey to the representations made by the petitioner on February 20, 2025 and March 26, 2025 (annexure – 'P9' at pages 45 to 47 of the writ petition) and it is then submitted that by the said representations, the petitioner requested the Principal Commissioner of Customs (Port), Calcutta to release the petitioner's goods provisionally upon determining *"the terms and conditions for the Provisional Release"*.

5. It is submitted that after considering the petitioner's representations as aforesaid, the Principal Commissioner of Customs passed an order of provisional release on July 10, 2025 thereby imposing certain conditions.

6. Mr. Dey submits that by a letter dated July 19, 2025, the petitioner declined to accept release of the seized goods in terms of the provisional release order dated

July 10, 2025 while alleging that the same was faulty *"on technical grounds"*.

7. Mr. Dey further submits that once a provisional release order is passed by the Principal Commissioner, upon an application seeking provisional release of the seized goods, the same would become appealable before the Appellate Tribunal in terms of Section 129A(1)(a) of the Customs Act, 1962. It is submitted that the petitioner cannot seek release of the seized goods until and unless the provisional release order dated July 10, 2025 is set aside by the appropriate tribunal and the same will bind the petitioner.

8. Mr. Molla, learned advocate appearing for the petitioner refutes such submission of Mr. Dey and submits that the provisional release order could not have been passed by the Principal Commissioner of Customs by imposing a condition of furnishing PD Bonds (Provisional Duty Bonds) inasmuch as the same are exclusively meant for provisional assessment of imported goods before their clearance for home consumption. It is submitted that the goods that have been seized from the petitioner do not fall within that category.

9. Mr. Dey, learned advocate appearing for the customs authorities, however counters such submission of Mr. Molla by submitting that firstly the point taken by

Mr. Molla, namely, the seized goods are not imported, lies in the domain of disputed questions of facts inasmuch as it is the case of the respondents/customs authorities that the goods were produced in Bangladesh and would therefore fall within the category of imported goods and that being so the said question/issue can be best adjudged by the Appellate Tribunal. Secondly, it is submitted that even otherwise, this point should only be raised before the Appellate Tribunal as a decision taken by the Principal Commissioner Customs on this aspect is a decision within his jurisdiction and therefore there is no question of lack of jurisdiction.

10. Heard learned advocates for the respective parties and considered the material on record.

11. It is evident that the order for provisional release of goods on the terms mentioned therein was passed on July 10, 2025 on the petitioner's own application seeking for release of the goods provisionally while urging the customs authority to determine the terms and conditions of such release.

12. Such order is appealable before the Appellate Tribunal under Section 129A (1)(a) of the said Act of 1962. Since a complete remedy is available to the petitioner before the Appellate Tribunal and since it has not been demonstrated before the Court that the order of provisional release of goods has been passed

by an authority lacking jurisdiction or that the said order is wholly perverse, this Court should not intervene at this stage under Article 226 of the Constitution of India. This Court finds substance in the submission of Mr. Dey that the issue raised by Mr. Molla is one which would entail factual enquiry. In such view of the matter this Court is not minded to entertain this writ petition and the petitioner is left free to approach the appellate authority by filing an appeal in terms of Section 129A of the said Act of 1962.

13. It is noticed that this writ petition was filed within the period of limitation prescribed for preferring an appeal before the Appellate Tribunal under Section 129A of the said act of 1962. In such view of the matter, if the petitioner files an appeal before the Appellate Tribunal within a period of one month from date and complies with all other statutory formalities and obligations required for filing of an appeal before the Appellate Tribunal, then the Appellate Tribunal shall consider the petitioner's appeal on merit and the respondents/customs authorities shall not raise any objection to the appeal on the ground of limitation.

14. It is clarified that this Court has not gone into the merits of the matter and all points are left open to be

decided by the Appellate Tribunal strictly in accordance with law.

15. Since no affidavits have been called for, the allegations made in the writ petition shall be deemed not to have been admitted by the respondents.

16. WPA 22302 of 2025 stands disposed of with the above observations.

17. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.

(Om Narayan Rai , J.)