

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION
APPELLATE JURISDICTION

PRESENT:

The Hon'ble Justice Apurba Sinha Ray

CRR 153 of 2024

Union of India
Vs.
The State of West Bengal & Anr.

FOR THE PETITIONER : Mr. Ratan Banik
Mr. Sankar Sarkar
Mr. Saptarshi Banik

FOR THE STATE : Mr. Aditi Shankar Chakraborty, Ld. APP
Dr. Arjun Chowdhury

FOR ORDERS ON : MARCH 12, 2025

THE COURT:

1. This revisional application has been filed against the orders dated 07.12.2023 and 07.02.2024 of the Learned Chief Judicial Magistrate, Alipurduar passed in G.R. Case No. 1919 of 2023 whereby he released one TATA container vehicle bearing no. HR/38-D/4625 in favour of the respondent no. 2 on the zimmanama bond.

2. It appears from the record, in spite of service of notice upon the respondent no. 2 Mr. Rajesh Kumar Sharma, he did not appear to contest the instant proceeding. The record further shows that the instant matter is pending from the month of April, 2024. As the respondent no. 2 did not appear in spite of service notice, I proceed to dispose of this revisional application on merits.

3. The brief fact of the case, as has been narrated, is:-

“On 11.10.2023, a complaint was lodged by the ASI, Karna Kumar Barman on the basis of a suspicion that one TATA container 6 (six) wheeler vehicle bearing registration no. HR/38-D/4625, loaded with 15 (fifteen) big cartons of cigarettes of ESSE Light and other brands. At this a specific case was started vide Kumargram P.S. Case No. 208/2023, dated 11.10.2023, under Section 379/411/414 of the Indian Penal Code, read with Section 7, 13, 16 and 20 of the COTP Act, 2003. Subsequently, the accused Samim, the driver of the vehicle loaded with cigarettes, was arrested and produced before the Ld. Chief Judicial Magistrate, Alipurduar on 11.10.2023 and thereafter, on 04.11.2023, he was released on bail. On 16.10.2023, the Investigating Officer prays for handing over the case to the Customs department, Alipurduar Preventive Unit and on the prayer of I.O. the Ld. Chief Judicial Magistrate, Alipurduar made a direction upon the I.O. to handover the case record along with all the relevant documents to the Customs department, after observing all the legal formalities and to submit his

compliance report. On 18.10.2023 the seized cigarettes of foreign origin and the vehicle, together with the Seizure List, FIR Copy and all relevant documents were handed over to the Alipurduar Customs Preventive Unit. After receiving those items the customs authority seized those items under Section 110 of Customs Act and started a Seizure Case vide No. 03/IMP/CL/CIG/POL/CUS/APDPU/2023-24, dated 18.10.2023. Thereafter, on the prayer of owner of the vehicle on 07.12.2023 the Ld. Chief Judicial Magistrate, Alipurduar passed an order for returning the seized vehicle alongwith all documents except Driving Licence to the Petitioner/ Power of Attorney holder Rajesh Kumar Sharma. On 07.02.2024 the Ld. Chief Judicial Magistrate, Alipurduar after rejecting the prayer of Customs department directed the Enquiry Officer to produce the vehicle by 4 p.m. without further delay and to show-cause as to why the proceedings under Section 174 IPC shall not be initiated against him.”

4. Mr. Banik, the learned counsel for the revisionist/Union of India, has submitted that under the provisions of the Customs Act, 1962, the vehicle which carried the goods of foreign origin or smuggled goods etc. is liable to be confiscated under Section 115 of the said Act. Without considering all materials on record, the Learned Chief Judicial Magistrate, Alipurduar released the vehicle in favour of its registered owner in violation of the provisions of Customs Act, 1962.

5. The learned counsel has relied upon several judicial decisions namely **Union of India Vs. Sushanta Karmakar @ Susanta Karmakar (CRR 458 of 2019) of the Hon'ble High Court at Calcutta, Directorate of Revenue Intelligence, Shillong Regional Unit, Shillong Vs. Shri Ajay Babu Manda in Crl. Petition No. 1 of 2022 of the Hon'ble High Court of Meghalaya, Amit Kumar Gupta Vs. Principal Commissioner of Customs (Import) in Crl. M.C 236 of 2021 & Crl. M.A. 1244 of 2021 of the Hon'ble Delhi High Court** in support of his contention that it is the Customs Authority which has the exclusive jurisdiction relating to seized goods and articles.

6. Dr. Chowdhury, the learned counsel for the State has submitted that though he is not disputing the authority of the revisionist to deal with the seized goods and conveyances but the Learned Jurisdictional Magistrate has also an authority to release the seized vehicle in connection with Customs Act, 1962 on conditions. The Learned Chief Judicial Magistrate has given the interim custody of the vehicle to the registered owner on certain conditions and there is no violation of law at the instance of the Learned Chief Judicial Magistrate as alleged by the revisionist.

7. I have considered the materials on record including the Case Diary. It appears that initially alleged cigarettes of foreign origin and the vehicle bearing registration no. HR/38-D/4625 were seized by the concerned ASI of Kumargram and a specific case being Kumargram P.S. Case No 208 of 2023 dated 11.10.2023 under Sections 379/411/414 of the Indian Penal Code, read with section 7, 13, 16 and 20 of the COTP Act, 2003 was started.

Subsequently, by an order dated 16.10.2023 the Learned Chief Judicial Magistrate, Alipurduar directed the investigating officer of the said Kumargram Police Station to handover all the seized articles and vehicle to the customs authority. Accordingly, on being produced, such goods and vehicle as aforesaid were re-seized by the Inspector of Customs and Officer-in-Charge of Preventive Unit on 18.10.2023 in presence of the witnesses in connection with a seizure Case No. 03/IMP/CL/CIG/POL/CUS/APDPU/2023-24 dated 18.10.2023.

8. Subsequently, by an order dated 07.12.2023 the Learned Chief Judicial Magistrate, Alipurduar directed the customs authority to return the seized vehicle along with all documents excepting Driving Licence to the power of attorney holder, Rajesh Kumar Sharma. The same order being not complied with, the Learned Chief Judicial Magistrate directed the Customs Department to produce the vehicle on 07.02.2024 by 4:00 P.M. without further delay and in default, the possibility of initiation of proceedings under Section 174 of IPC is communicated. In view of the order of the Learned Chief Judicial Magistrate, Alipurduar the vehicle and relevant documents excepting Driving Licence were produced and the same were released on Zimmanama.

9. I have also considered the judicial decisions referred to by the learned counsel of the Union of India. The factual matrix of the instant case is different from the factual aspects involved in the three above noted

decisions. In our case, initially the foreign cigarettes and the vehicle were intercepted and seized by the police authority which subsequently transferred the investigation/enquiry to the customs authority by virtue of an order of the Learned Chief Judicial Magistrate, Alipurduar. It is revealed from the order of the Learned Chief Judicial Magistrate that in spite of handing over the articles and vehicles to the customs authority no specific case was started by the customs authority and further, the customs authority did not submit any report regarding such seized vehicle as called for by the Learned Chief Judicial Magistrate, Alipurduar. It is needless to mention that in view of judicial decision of **Sunderbhai Ambalal Desai Vs. State of Gujarat, Special Leave Petition (Crl.) 2745 of 2002** the seized vehicle is to be released to the registered owner within 15 to 30 days from the date of its seizure. It is unfortunate that in spite of direction, the customs authority failed to submit any report to the learned court, as stated above, showing their objection to release of such a vehicle. The record shows that though the said vehicle was re-seized under memo no. 03/IMP/CL/CIG/POL/CUS/APDPU/2023-24 dated 18.10.2023 but no charging section under Customs Act, 1962 has been mentioned. It is specific observation of the Learned Chief Judicial Magistrate that in spite of direction, the customs authority did not provide any information whether the revisionist had initiated any specific case in respect of such re-seizure or not. Therefore, the Learned Chief Judicial Magistrate had given some reasons for release of the vehicle on interim custody. But, at the same time, this court is also astonished to see that previously on 30.10.2023 the

Learned Chief Judicial Magistrate had refused to entertain the application for return of vehicle on the ground that the case had already been transferred to the customs authority. The relevant order dated 30.10.2023 is as follows:-

“.....the petitioner Sanjit Kumar Biswas files a petition for returning the seized vehicle bearing no. HR/38-D/4625the prayer of the petitioner for releasing the seized vehicle stands rejected. The instant case has already been handed over to the Customs Department, Alipurduar, Preventive Unit, Alipurduar.”

10. In spite of such observation on 30.10.2023 the Learned Chief Judicial Magistrate again considered the prayer for return of the seized vehicle at the instance of one Rajesh Kumar Sharma and asked the I.O./Customs authority to submit reports. It is not understandable that when the Learned Chief Judicial Magistrate had already observed in one of the petitions that the case had already been handed over to the Customs Department and rejected the prayer for release of such vehicle what prompted him to dilute his such stand when a further petition for release of the vehicle was filed by another person. The stand taken by the Learned Chief Judicial Magistrate, Alipurduar appears to be contradictory.

11. After considering the provisions of Customs Act, 1962 it appears that Customs Act, 1962 contains the provisions for releasing seized articles or vehicles which are involved in the commission of the alleged offence under the Act, 1962 pending adjudication. The proper and competent authority i.e. the adjudicating authority under the Act, has ample power to deal with such prayer for release of the vehicle. It is a self-contained code. When the re-seizure was actually done under the Customs Act, 1962, it would have been more prudent for the Learned Chief Judicial Magistrate to ask the competent authority under Customs Act to deal with the prayer for release in accordance with provisions of 1962 Act.

12. In this regard, I would like to refer to Section 110A of the Customs Act, 1962.

“110A. Provisional release of goods, documents and things seized or bank account provisionally attached pending adjudication.- Any goods, documents or things seized or bank account provisionally attached under section 110, may, pending the order of the adjudicating authority, be released to the owner or the bank account holder on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require.”

13. Needless to say the term 'goods' includes vehicle, conveyances etc. as per Section 2(22) of the Customs Act, 1962.

14. After considering all the materials on record, I find that the orders dated 07.12.2023 and 07.02.2024 of the Learned Chief Judicial Magistrate, Alipurduar passed in G.R. Case No. 1919 of 2023 releasing the vehicle bearing no. HR/38-D/4625 were not sustainable in law in view of the specific provisions under the Customs Act, 1962 as discussed above and accordingly the said orders are hereby set aside. The Learned Chief Judicial Magistrate, Alipurduar is directed to pass necessary order after re-opening the relevant case record directing the said Rajesh Kumar Sharma being the petitioner for release of the said vehicle to produce the vehicle bearing no. HR/38-D/4625 before the customs authority within one month from the date of receipt of this order after cancelling the zimmanama bond in accordance with law, and, in default, the Learned Chief Judicial Magistrate, Alipurduar shall take coercive steps against the petitioner for production of the said vehicle before the customs authority without fail. The revisional application is allowed on contest. No costs.

15. However, the disposal of the instant revisional application in favour of the revisionist/customs shall not prejudice the rights of the respondent no. 2 under the Act, 1962.

16. Urgent certified website copies of this Order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(APURBA SINHA RAY, J.)