(1988) 12 CAL CK 0039

In the Calcutta High Court

Case No : Civil Appeal No. 740/81

Bulakidas Bhaiya APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 06-12-1988

Acts Referred:
Customs Act, 1962 — Section 105

Citation : (1989) 43 ELT 62

Hon'ble Judges : Padma Khastgir, J;L.M. Ghosh, J

Bench : Division Bench

Judgement

Padma Khastgir, J.—Being aggrieved by an order passed by the Learned Court (R.N. Pyne J. as his Lordship then was) then present appeal has been preferred.

2. In the writ petition filed by the appellant the appellant challenged the search and seizure being invalid and beyond the jurisdiction of the authorities concerned. The writ petitioner also prayed for a writ of prohibition restraining the respondent authorities from giving effect to such search and seizure and for making any investigation in respect thereto. The writ petitioner further prayed that all further proceedings and/or investigations in respect of such search and seizure be stayed.

3. M/s. Lea Min Tannery was granted import licence for import of the items as mentioned in Appendix 5 and 7. Said M/s. Lea Min Tannery authorised the petitioner Bulakidas Bhaiya to act as letter of authority holder for the purpose of importing goods under the said licence.

4. One M/s. Salem Oil & Grease Co., Salem, U.S.A. authorised the writ petitioner to print and distribute in India literature explaining the products offered to Leather Industry by the said company. The petitioner printed and distributed the literatures in India with regard thereto. The petitioner on 6th December 1980 imported synthetic fat lignonrs and non-losic fat lignonrs and other materials against the said import licence. After the goods arrived the bills of entry were

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presented. Samples were drawn from the imported quantity of goods and it was sent for test to Central Leather Research Institute. The petitioner paid on the basis of provisional assessment necessary taxes. The petitioner was aggrieved inasmuch as according to the petitioner, the officers of the collector of Customs, Calcutta made a wrongful and illegal search at its office at 232, Chit-taranjan Avenue, Calcutta, and according to the petitioners, wrongfully and illegally seized various books of accounts, papers, documents, registers, catalogues, rubber stamps etc., after recording the statements of some of the employees of the writ petitioner. The petitioner contended that inasmuch as all the papers and documents were in their usual and normal place and were not secreted by the writ petitioner under the circumstances the authorities concerned had no right of seizing the said documents inasmuch as the consignments were also seized from the port including the documents relating thereto.

5. Being aggrieved thereby the petitioner re-moved the writ petition before Hon''ble Mr. Justice T.K. Basu (as His Lordship then was) and the Learned Judge was pleased to issue a Rule and appointed Mr. L.K. Banerjee, a Receiver to take possession of the said goods from the Customs House. The Receiver took possession of the said goods. Thereafter the Learned Judge Hon''ble Mr. Justice T.K. Basu (as his Lordship then was) directed release of the said goods by the Receiver in favour of the petitioner upon the petitioner furnishing a bank guarantee for Rs. 50,000/-. The grievance of the appellant before this Court is that the said search and seizure was invalid and/or illegal.

6. Section 105 of the Customs Act, 1962 empowers the Assistant Collector of Customs or an Officer of Customs specially empowered in his behalf by the Board if he has reason to believe that any goods are liable to confiscation or any documents or things which in his opinion will be useful or relevant to any proceedings under the said Act are secreted in any place he may authorise any officer of customs to search or may himself search for such goods and documents or things. Under these circumstances the submission of the Learned Lawyer appearing on behalf of the appellant that the goods and the articles which were seized by the customs authority were not secreted by the appellant but they were found in the proper place in the office is of no consequence inasmuch as this Court is of the view that the said Customs Officers if they have any reason to believe that any goods are liable to confiscation or any documents which in their opinion will be useful or relevant for any proceedings that authorised them to search and seize the offending articles. In the instant case it has been the case of the customs authorities concerned that not only the writ petitioner has published and/or printed materials which were contrary to what has been given by the company in U.S.A. but it was clearly done for the purpose of misleading the authorities concerned to take advantage of some provisions of the particular schedule so that the petitioners were not required to pay any tax thereon. The goods imported do not fall within the category of the goods for which such exemption was granted. In the circumstances the investigation is still on and no final assessment has yet been made. Secondly, the Learned Lawyer

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appearing on behalf of the appellant submitted that samples had been drawn for the purpose of testing by chemical examiner and such sample has been given to the chemical Examination Department at Jadavpur University. The petitioner contended that inasmuch as such samples had been drawn not in the presence of the petitioner as such the respondent authorities are not entitled to utilise the same against the petitioner.

7. As observed by the Learned Court below and as it is felt by this Court also that such contention of the petitioner is premature inasmuch as no final assessment has been made. As such this is not the proper time to agitate such point. However, in view of the observations of the ''Learned Court below and also according to us, such disputed question of fact cannot be entertained by a court discharging writ jurisdiction. In any event this Court is of the view that the points urged by the appellants are premature and need not be considered by this Court at this stage. However, this observation of this Court will not in any way prejudice the petitioner to agitate this point after the final assessment if the petitioner is so entitled in accordance with law.

8. Pursuant to the order of Hon''ble Mr. Justice T.K. Basu (as his Lordship then was) the entire goods had been released in favour of the petitioners and the petitioner has sold off the said goods and has realised the sale proceeds.

9. In view of an interim order passed in this appeal by Hon''ble Mr. Justice Anil Kumar Sen and Hon''ble Mr. Justice S.K. Mukherjee (as their Lordships then were) this Court makes it clear that the final order passed by this Court in the appeal will not prevent the respondent authorities from finally making the assessment after giving notice to the appellant if not already notified.

10. The bank guarantee given by the appellant shall be renewed till further orders of this Court.

11. The appeal is disposed of accordingly.

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