
(1996) 02 AHC CK 0111

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1001 of 1995

Gulfam Ahmad

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 06-02-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 115

Citation : (1996) 83 ELT 34

Hon'ble Judges : M.C. Agarwal, J

Bench : Single Bench

Advocate : C.K. Parekh, for the Appellant; A.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

M.C. Agarwal, J.—By this petition under Article 226 of the Constitution of India the petitioner challenges the seizure of his truck by the Excise official on 10/11-2-1995 and seeks a direction in the nature of mandamus for its release and in the alternative for reduction of the amount of security demanded in the sum of Rs. 50,000/-.

2. Counter and rejoinder affidavits have been exchanged.

3. I have heard Sri C.K. Parekh, learned Counsel for the petitioner and Sri A.K. Singh, learned Counsel for the respondents.

4. The petitioner is the owner of truck No. UP-78-B-7115 which is used for transport of the goods and is driven by a driver Ram Naresh alias Laxan engaged by the petitioner. The said truck was seized by the Custom Authorities when some bags of clove alleged to have been smuggled from Nepal and some paddy husk was in the process of being loaded in the said truck which was in the charge of the driver. The petitioner's case is that the driver had taken a consignment of potatoes from Kanpur to Bansi and the alleged consignment of clove and [paddy] husk was being loaded without his knowledge and consent. The seizure memo

copy of which is Annexure I to the writ petition mentions the statement of various persons that were at or about the place where the goods brought in the a trolley were being loaded in the truck and the cleaner of the truck had informed the authorities that the truck had come from Kanpur with a consignment of potatoes. The Additional Commissioner, Customs ordered the truck to be released on the petitioner furnishing a security of Rs. 50,000/-. Copy of this order dated 25-7-1995 is Annexure "3" to the writ petition. In the counter affidavit filed on behalf of the Union of India, it is stated that the truck was being loaded with smuggled goods when it was seized.

5. u/s 115 of the Customs Act a conveyance used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods is liable to confiscation. It is not the case of the respondents that the said consignment of clove was smuggled from Nepal by using the truck in question, and carriage of the alleged smuggled consignment of goods had not yet begun because the consignment was only in the process of loading. Therefore, the seizure of the truck was not legally permissible.

6. The writ petition is accordingly allowed and the impugned order dated 11-2-1995 seizing truck No. U.P.78-B-7115 is hereby quashed. The respondents are directed to release the truck forthwith in favour of the petitioner. Parties will bear their own costs.