(2012) 09 PAT CK 0046

In the Patna High Court

Case No : Miscellaneous Jurisdiction Case No. 4510 of 2011

Jhantu Das APPELLANT

Vs

The Union of India and Others RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:
Customs Act, 1962 — Section 108, 110(2), 124

Citation : (2012) 09 PAT CK 0046

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Prabhat Ranjan, for the Appellant; Archana Meenakshee, for the Respondent

Judgement

Honourable Mr. Justice S.N. Hussain

1. This petition has been filed by the petitioner for initiating a proceeding of contempt of court against the opposite parties for deliberate and willful non-compliance/violation of order dated 12.08.2011 by which this court allowed CWJC No.9644 of 2011 filed by the petitioner and quashed the impugned order dated 07.06.2011 passed by the Commissioner of Customs (Preventive), Patna (Camp at Lucknow) and the respondents authorities were directed to abide by the orders, which have already been passed and/or which may be passed in future in L.P.A. No.928 of 2011 and to act accordingly. It may be noted in this connection that the respondents filed M.J.C. No.49 of 2012 for modification of order dated 12.08.2011, but the said M.J.C. case was dismissed for non-prosecution vide order dated 15.02.2012.

2. Learned counsel for the petitioner argued that in the present case more than a year has passed since the seizure of the goods, but till date no notice u/s 124 of the Act has been issued and the decision of the Commissioner to extend the period of issuance of show-cause notice had already been quashed by this court, hence the retention/detention of the goods by the authorities is absolutely beyond jurisdiction apart from being contemptuous in view of the order of this

court dated 12.08.2011 passed in CWJC No.9644 of 2011, specially when the interim order of the Division Bench dated 24.06.2011 and 30.06.2011 are no longer continuing. With respect to the question as to how contempt is made out, the petitioner has raised the following points:

(i) When the decision of the Commissioner dated 07.06.2011 taken under the proviso to section 110 (2) of the Customs Act was quashed and the decision to continue with the investigation till December 2011 was held to be illegal then the opposite parties were bound to extend the benefit of section 110(2) of the Customs Act to the petitioner but in the present case they have deliberately and willfully omitted to do so.

(ii) For the reason that when the very decision of continuing the investigation till December 2011 was quashed by this Hon''ble Court then in the absence of any appeal against that order or the same having been stayed or modified by any higher forum or competent jurisdiction, the continuance of investigation beyond 12.08.2011 and consequent issuance of show cause notice dated 01.12.2011 (that too after filing of the present contempt application) placing reliance on the order dated 07.06.2011 is a clear criminal contempt of the orders of this Hon''ble Court.

(iii) For the reason that when the very basis of any decision has been declared to be illegal, then any consequential decisions and actions taken by the opposite parties placing reliance or deriving authority from the order already declared to be illegal is clearly an act of willful and deliberate contempt.

(iv) Every judicial order passed by this court has been flouted by the authorities as would be apparent from the facts of this case and even in the said L.P.A the authorities intentionally did not bring the relevant facts on record.

3. On the other hand, learned counsel for the opposite parties submitted that order dated 07.06.2011 passed by the authorities and which was quashed by this court vide order dated 12.08.2011 passed in CWJC No.9644 of 2011, was a separate show-cause notice only for extension of time and hence in no way the respondents had violated the order of this court and in view of the various orders of this court as well as of the Division Bench the respondents had completed the confiscation proceeding on 15.05.2012.

4. Learned counsel for the opposite parties also averred that all the orders of the High Court had been complied without any disobedience, whereas order dated 15.05.2012 passed by the authorities showed non-appearance of petitioner in spite of notices sent to her/him by the authorities. Learned counsel for the opposite parties also claimed that the Division Bench of this court passed order of stay dated 24.06.2011 in L.P.A. No.928 of 2011 on the basis of specific information as per the seizure report and money receipt produced by petitioner in CWJC No.3683 of 2011 being found to be forged, which was also considered in the final order of the authorities dated 15.05.2012. In the said circumstances, learned counsel for the opposite parties argued that there was no merit in the

claim of the petitioner and this M.J.C. case was fit to be dismissed.

5. Learned counsel for the opposite parties mentioned following list of dates on which steps were taken by the parties or orders were passed by the courts:-

19.05.2011

CWJC No.3683 of 2011 allowed and seizure quashed by His Lordship with directing to release the consignment.

02.06.2011

L.P.A. 928 of 2011 filed vide token no.898 of 2011 along with stay petition. It has been wrongly stated by the petitioner that the L.P.A. was filed on 23.06.2011.

08.06.2011

Mentioning before the vacation bench for urgent hearing of L.P.A. for granting of stay of order dated 19.05.2011 not taken up, as the vacation bench was of the view that it will be taken up by regular bench after vacation.

07.06.2011

As the single judge orders had already been challenged in L.P.A. 928 of 2011, in exercise of administrative powers u/s 110 (2) of the Customs Act 1962, Commissioner passed order dated 07.06.2011 extending the mandatory period of investigation till December 2011 in order to avoid further complications under the act.

24.06.2011

L.P.A. 928 of 2011 taken up, ad interim stay of impugned order.

29.06.2011

Matter adjourned for the day.

30.06.2011

Appeal admitted, ad interim stay granted on 24th June 2011 to continue on condition that appellant Customs Department will complete the adjudication proceeding within ten days from the date the owner or her representative appears before the authority. Undertaking by the counsel that petitioner will appear within one week from today before the authority.

01.07.2011

Petitioner wrongly claims to have appeared before the Customs authorities as he only got received his letter from receipt section of the Customs Department but never appeared before any authority which was Friday the last working day of the office.

04.07.2011

Petitioner wrongly claims to have appeared before the Customs authorities as again he only got received his letter from receipt section of the Customs Department but never appeared before any authority. It is mentioned that he claimed in his letter that again he will come on 05.07.2011 but he did not come.

05.07.2011

Letter of Senior Intelligence Officer DRI, Patna issued to the petitioner stating that Customs authorities have intimated DRI, Patna that neither Jhantu Das nor his representative has appeared before Customs authorities on 01.07.2011 and 04.07.2011. Through above letter petitioner was requested to appear before DRI, Patna (Investigating Authority) within seven days of the date of order dated 30.06.2011 along with relevant documents.

08.07.2011

I.A. 4484 of 2011 filed for modifying order dated 30.06.2011 to the effect that petitioner is playing mischief with the appellants and therefore be directed to appear before DRI, Patna not Customs and secondly the extend the period of completing the adjudication proceedings to at least sixty days.

11.07.2011

Order dated 30.06.2011 was modified. Petitioner was directed to appear before the Senior Intelligence Officer in his office on 12th July 2011 between 10.30 AM to 12.30 PM. The applicant Senior Intelligence Officer was directed to interrogate the owner of the goods or her representative on 12th July 2011 without fail. It was also directed that the interrogation/investigation should be completed as early as possible, but not beyond 20th July 2011 compliance with this direction should be reported to the Court.

12.07.2011

At 12.30 hrs. one fax dated 12.07.2011 was received, which was unsigned and sender was mentioned as ?For JhantuDas? in which it was stated that he shall appear at 02.30 PM on 12.07.2011. However, during office hrs. (09.30 hrs. to 18.00 hrs.) of 12.07.2011 neither Smt. ChhayaSarkar nor her representative appeared in the DRI office. One person claiming himself as Sri PrabhatRanjan, Advocate appeared at about 14.30 hrs. claiming to be the representative of Sri JhantuDas (and not Smt. ChhayaSarkar, the alleged owner of the goods). The said person identifying himself as Sri PrabhatRanjan, Advocate, was requested to tender his statement before the Senior Intelligence Officer, DRI, Patna u/s 108 of the Customs Act, 1962 in compliance of order dated 11.07.2011 and to produce legal authorization to appear and tender statement on behalf of the alleged owner of the goods. However, he refused to tender any statement u/s 108 of the Customs Act,1962 before the Senior Intelligence Officer, DRI, Patna and did not produce any legal authorization to appear and tender statement on behalf of the alleged owner of the goods.

18.07.2011

I.A. No.4720 of 2011 filed before the Hon?bleCourt reporting about the dubious conduct of the petitioner in connivance with his counsel. It is wrongly submitted by the petitioner that this .A. was filed for extending the time limit for completion of investigation and was rejected.

20.07.2011

I.A. No.4720 of 2011 is misconceived hence rejected. (I.A. was rejected for the reason that without completing the adjudication proceedings matter was reported to their Lordships).

12.08.2011

Order dated 12.08.2011 quashed order dated 07.06.2011 granting extension of time period for issuing show cause notice passed by the Commissioner of Customs, Patna and directed the respondent authorities to abide by the orders, which have already been passed and/or, which may be passed in future in L.P.A. No.928 of 2011.

15.08.2011

The contempt application filed by the opposite parties (the department) against the petitioner for initiation of contempt proceedings against the petitioner for repeatedly flouting the order of their Lordship in L.P.A. 928 of 2011.

12.09.2011

This contempt petition was held to be misconceived hence rejected, (M.J.C. 3338/2011) by LPA bench.

6. From the arguments on behalf of the parties and the materials on record it transpires that on 09.12.2010, 11200 KG (said to be 10,920 KG by the Union of India) of betel nuts in 140 bags transported on two different vehicles were seized leading to institution of DRI Case No.718(ii)05/Seiz/PRU/2010. The said seizure and the proceeding were challenged by the petitioner who is the representative of the owner of betel nuts, namely Smt. Chhaya Sarkar in C.W.J.C. No.3683 of 2011. After hearing both the parties a Bench of this court allowed the said writ petition on 19.05.2011 after coming to the conclusion that the very seizure of the consignment was without any authority of law and the Department of Customs had completely failed to raise any iota of doubt in the mind of the Court, based on its experience and expertise, that it had any prima facie material in support of its reasonable belief that the betel nuts were of foreign origin except unfounded suspicion and hence the seizure of the consignment and the said DRI case were held to be illegal and the Department of Customs was directed to forthwith release the consignment and the vehicle of the petitioner.

7. In view of the aforesaid order dated 19.05.2011 passed in CWJC No.3683 of 2011 the petitioner filed a representation dated 26.05.2011 before the authority

concerned for releasing the betel nuts and the vehicles with a copy of the said order but the concerned authority did not release the said articles and in spite of DRI case having been held to be illegal by this court, continued with the investigation and vide order dated 07.06.2011 extended the period of investigation till 08.12.2011 under the provision of section 110 (2) of the Customs Act, 1962 (hereinafter referred to as ''the Act'' for the sake of brevity), although the said authority had full knowledge of the abovementioned order of this court dated 19.05.2011.

8. Hence, the petitioner challenged the said order dated 07.06.2011 before this court vide CWJC No.9644 of 2011 which was filed on 22.06.2011. However, after hearing the parties and considering their respective pleadings the said writ petition bearing CWJC No.9644 of 2011 was allowed on 12.08.2011 after arriving at the following findings:-

10. After hearing learned counsel for the parties and after perusing the materials on record, it is quite apparent that order dated 19.05.2011 passed by a Bench of this Court in C.W.J.C. No.3683 of 2011 was binding upon the respondents authorities until it was stayed or reversed by a higher court and unless that was done, the authorities should not have disobeyed or violated the said order on the assumption that it was against any law. In the said circumstances order dated 07.06.2011 passed by the authority was in complete violation of the said order of a Bench of this court dated 19.05.2011 by which the seizure and the DRI case were held to be illegal and the consignment and vehicle were directed to be released forthwith and hence there was no occasion for the authorities to continue with the proceeding of either adjudication or investigation until the said order was stayed or reversed by a higher court.

11. It is not in dispute that L.P.A. No.928 of 2011 was filed by the authorities much thereafter on 23.06.2011 and the various orders dated 24.06.2011, 30.06.2011 and 11.07.2011 clearly show that the Division Bench was of the view that the investigation and the adjudication must be completed as early as possible and had fixed specific dates in July, 2011 for the said purpose. In the said circumstances, the impugned order of the authority concerned dated 07.06.2011 (Annexure5) cannot legally be allowed to continue in view of the orders passed by the Division Bench specially when the Division Bench is itself fixing dates for completion of investigation and adjudication by the authorities concerned.

12. In the aforesaid facts and circumstances, this writ petition is allowed and the impugned Order No.02- CUS/CC/DRI/II dated 07.06.2011 (Annexure-5) issued by the Commissioner of Customs (Preventive), Patna (Camp at Lucknow) (respondent no.2) is quashed and the respondents authorities are directed to abide by the orders, which have already been passed and/or, which may be passed in future, in the above mentioned L.P.A and act accordingly.

9. It is not in dispute that order dated 19.05.2011 passed in CWJC No.3683 of

2011 was not challenged by the respondents for more than a month and only when petitioner filed CWJC No.9644 of 2011, the respondents challenged the said order by filing L.P.A. No.928 of 2011 on 23.06.2011. The said L.P.A. was heard by a division bench of this court on 24.06.2011 and ad-interim order was passed staying the implementation of the impugned order dated 19.05.2011 passed by the learned Single Judge in CWJC No.3683 of 2011. However, on 30.06.2011 while admitting the appeal the Division Bench modified the interim order directing that pending the appeal, ad-interim stay granted on 24.06.2011 shall continue on condition that the appellant-Custom Department will complete the adjudication proceeding within 10 days from the date the owner of the seized goods Smt. Chhaya Sarkar or her representative appears before the authority.

10. However, in the said L.P.A. an application bearing I.A. No.4484 of 2011 was filed for modification of interim order of the Division Bench dated 30.06.2011 in which learned counsel for the authorities submitted that until investigation was completed, the adjudication proceeding cannot be initiated and hence 10 days time given for adjudication was not sufficient. On the other hand, learned counsel for the petitioner submitted that as per the direction of this court vide order dated 30.06.2011 he had appeared before the authorities, but no adjudication proceeding was pending against the petitioner, who was being unnecessarily harassed by the authorities. In the said circumstances, the Division Bench of this court vide order dated 11.07.2011 directed the owner of the goods Smt. Chhaya Sarkar or her representative to appear before the Senior Intelligence Officer in his office on 12.07.2011 between 10.30 A.M. and 12.30 P.M. with all relevant documents referred in the communication dated 05.07.2011 relied upon by learned counsel for the petitioner, whereas the Senior Intelligence Officer was directed to interrogate the owner of the goods or her representative on the said date without fail and the interrogation/investigation must be completed as early as possible, but not beyond 20.07.2011. Adjudication, if any, was directed to be immediately followed and completed as early as possible without harassing the owner of the goods or her representative in the name of investigation.

11. Thereafter I.A. No.4720 of 2011 was filed by the authorities for extension of time granted by the Division Bench on 11.07.2011, but the said application was rejected as misconceived by the Division Bench on 20.07.2011. Similarly a petition for contempt bearing M.J.C. No.3338 of 2011 was filed by the authorities making allegations against the petitioner but the said application was also rejected by the aforesaid Division Bench as misconceived vide order dated 12.09.2011.

12. From the aforesaid facts and circumstances, it is quite apparent that limit for completion of investigation/interrogation was extended by the Division Bench vide order dated 11.07.2011 only till 20.07.2011 and not beyond that without continuing the earlier ad-interim orders dated 24.06.2011 and 30.06.2011. Furthermore although the petitioner had appeared on the fixed date but the

interrogation/investigation was not completed by the authorities within the time prescribed in the order of the Division Bench dated 11.07.2011 passed in L.P.A. No.928 of 2011. Hence the order of stay, being conditional one, did not continue after expiry of the date fixed by the said court.

13. Learned counsel for the petitioner has rightly claimed that the above mentioned conditional order of stay passed by the Division Bench in the said L.P.A. did not continue after the expiry of the period fixed by the said court and hence since no stay existed any more, CWJC No.9644 of 2011 was heard by the Single Judge and it was decided after hearing both the parties on merits vide order dated 12.08.2011, allowing the petitioner''s claim and quashing the impugned order dated 07.06.2011.

14. It is also an undisputed fact that after the said order dated 12.08.2011 was passed in CWJC No.9644 of 2011, a representation dated 31.08.2011 along with the copy of that order was filed by the petitioner before the concerned authority, namely the Additional Director General, Directorate of Revenue Intelligence, Zonal Unit Lucknow (respondent no.1), whereafter on 12.09.2011 also the petitioner represented before the Commissioner of Customs, Central Revenue Building Patna (respondent no.2) for release of goods but none of those applications were heeded to and no communication was made to the petitioner till date with respect thereto by the said respondents, who are the concerned authorities, but have failed to take steps as per the directions of the High Court.

15. In the aforesaid facts and circumstances, the materials on record fully prove that the above named authorities i.e. respondent nos.1 and 2 were fully aware of the order of this court dated 12.08.2011 passed in CWJC No.9644 of 2011, but in spite of the above mentioned facts and circumstances they intentionally ignored the specific directions of this court and violated the said order and committed a clear case of contempt.

16. In these circumstances, this Court has no option but to hold the above named contemners guilty of contempt and punish them with simple imprisonment of three months, which must start within 30 days from the date of passing of this order and also with fine of Rs.2,000.00 each (Rupees two thousand), which must be paid within 30 days from today in favour of Patna High Court Legal Aid Society and receipt must be filed within the said period, failing which imprisonment of the contemners shall be extended by one month more. The contemners must surrender before the Police within 30 days from today.

17. Registrar General of this Court is directed to take immediate consequential steps with respect to the above order and send a copy of this order to Senior Superintendent of Police, Patna, for taking immediate action in that regard for compliance of the order of this Court by taking all necessary coercive steps against the above named contemners, if they fail to surrender within one month of this order.

18. Before parting with this order, this Court considers it incumbent on the facts

as noted above that this order be placed before the Central Board of Excise & Customs, Delhi, constituted by the Central Government under the Boards of Revenue Act 1962, for considering the proprieties of prosecuting the above named contemners under the provisions of the relevant Statute as this Court is afraid that the said act of the contemners may also come within the purview of corrupt practices. With the aforesaid directions/observations, this M.J.C. case is disposed of. Let copies of this order be sent to the Central Board of Excise & Customs, Delhi and the Commissioner of Customs, Central Revenue Building, Birchand Patel Path, Patna, Bihar for its compliance without undue delay.

