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(2001) 10 PAT CK 0035

In the Patna High Court

Case No : LPA No. 1126 of 2001

Nawdip Kumar APPELLANT

Vs

Union of India(UOI) RESPONDENT

Date of Decision : 12-10-2001

Acts Referred:
Customs Act, 1962 — Section 125

Citation : (2002) 142 ELT 314 : (2001) 4 PLJR 672

Hon'ble Judges : S.N. Jha, J;C.K. Prasad, J

Bench : Division Bench

Advocate : Harendra Kumar, for the Appellant; Rakesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

1. This Letters Patent Appeal arises from the order of a learned Single Judge of this Court dismissing the Writ Petition of the appellant.

2. The dispute relates to a Commander Jeep bearing registration No. BR-05-5666. The jeep was found carrying contraband items viz. 157 kg. of Chinees Silkyard and 104 pieces Rainbow Camera MD 35F of Japanese make valued at Rs. 3,55,200/- on 6-9-97. The goods were seized u/s 110 of the Customs Act, 1962 under the reasonable belief that the goods were liable to be confiscated u/s 111(d) of the Customs Act as the same had been brought into India illegally from Nepal in contravention of the provisions of Notification No. 09/96-Cus., dated 22-1-96 issued u/s 11 of the Customs Act read with Section 3 of the Foreign Trade (Development and Regulation) Act, 1992. The jeep was also seized as being liable to confiscation u/s 115(2) of the Customs Act. On 26-9-97 an application was filed for provisional release of the jeep on behalf of one Durgesh Prasad. He stated therein that though the jeep was registered in his name, it was in the custody of the appellant Navdip Kumar, his sister''s son, for last over two and half years and he had nothing to do with it. The appellant was alone re- sponsible for the maintenance and other affairs relating to the jeep.

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Along with other petition, filed on 21-1-1998, he enclosed a xerox copy of the affidavit sworn before the Notary Public on 20-1-1998. The application for provisional release was considered by the Deputy Commissioner, Customs, Muzaffarpur, who vide his order dated 5-2-98 directed the jeep to be released on payment of cash security of Rs. 40,000/- and execution of bond for the full value of the jeep i.e. Rs. 1,75,000/- in favour of the appellant. The appellant however, did not turn up to take the vehicle nor did he produce any security or bond. The jeep in course of time, was put on auction sale as a perishable item. Earlier notices were sent by registered post to both the appellant and said Durgesh Prasad, in terms of Section 150 of the Customs Act which however, returned un-served. Notices was therefore, also displayed on the notice board in terms of Section 153(b) of the Act. Despite all this, the appellant or said Durgesh Prasad, the registered owner, did not appear. In the circumstances the jeep was auction sold to the highest bidder for Rs. 66,000/- on 7-8-2000.

3. Meanwhile a confiscation proceeding had been initiated with respect to the goods as well as the jeep by the competent authority namely the Joint Commissioner, Customs, Patna who by order dated 17-2-2001 held that the contraband articles had been brought into India in violation of the provisions of the Customs Act and accordingly ordered for their confiscation. He also imposed personal penalty in terms of Section 122 of the Act on the persons named in the order. So far as the jeep is concerned, giving benefit of doubt, he gave the owner option to pay fine, in lieu of confiscation, as redemption fine quantified at Rs. 15,000/- as per provisions of Section 115(2) of the Customs Act. Such option was to be exercised within one month of receipt of the copy of the order. Durgesh Prasad was also informed about the order.

4. The appellant filed the connected writ petition, CWJC No. 8918/2001, for a direction upon the respondents to release the jeep and pay him damage suffered by the jeep in the meantime. The learned Single Judge noted that as in the meantime the vehicle had already been auction sold after following the procedure provided under the Customs Act; there was no question of release, but as the appellant has already deposited Rs. 15,000/- in terms of the order of the Joint Commissioner dated 17-2-2001 he was held entitled to the sale proceeds viz. Rs. 66,000/- provided the registered owner i.e. Durgesh Prasad does not claim the jeep himself. Against the said order of the learned Single Judge the appellant has filed this Letters Patent Appeal.

5. It is apparent that the jeep, being involved in the transport of contraband goods which were ultimately confiscated, too was liable to be confiscated but on giving benefit of doubt, the appellant was given the option to pay the redemption fine and take the vehicle. Had such benefit of doubt not been given, the vehicle was liable to be confiscated. Be that as it may, as far as the question of release is concerned, the jeep having already been sold at public auction, there is no question of its being released to the appellant. Firstly, the appellant was informed about the proposed sale to which he did not respond. Notice of sale was also

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displayed on the notice board in the office of the competent authority viz. Deputy Commissioner, Customs, Muzaffarpur, which also failed to elicit any response from him. It was submitted that on the own showing of the respondents, notice had returned un-served. This, according to us, does not necessarily mean that the appellant was not aware of the proposed sale. It was on his request that an order was passed on 5-2-98 for provisional release of the vehicle to which also the appellant did not respond. He cannot say that he was unaware of the events. The vehicle having remained under open sky, exposed to the vagaries of nature, if the authorities decided to sell it, at a public auction, treating it to be a perishable item, lest it would become a junk, the decision cannot be said to be arbitrary. Even if it be accepted that the appellant was not aware of the proposed sale, the vehicle having been sold, he cannot get release of the vehicle because no such order can be passed in absence of the auction purchaser. The appellant was at least expected to make him a respondent and only in his presence could pray for release. It is evident that being a bonafide purchaser, at a public auction, no order can be passed for release of the vehicle to his detriment. The vehicle having been sold for Rs. 66,0007- considering that it was of 1973 make, the price cannot be said to be at any low at all. The learned Single Judge has already clarified that he is entitled to return of the sale proceeds. In effect and substance, thus, he has been held entitled to Rs. 51,000/- after deducting the amount of redemption fine already paid by him. Considering his conduct, the circumstances in which the vehicle was seized, he could not expect a better deal.

6. We do not find any merit in this appeal, which is accordingly dis missed.

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