(2011) 09 DEL CK 0281

In the Delhi High Court

Case No : Writ Petition (C) 7185 of 2011 and CM No. 16364 of 2011 (for direction)

Sajjan Kumar APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:

Citation : (2011) 09 DEL CK 0281

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Naveen Malhotra, for the Appellant; Meera Bhatia and Rajiv Sharma for UOI., Mukesh Anand, for R 2 to 7, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition seeks mandamus for refund of Rs.1.42 crores which the Petitioner claims was received by the Respondents under coercion from the Petitioner.

2. It is the case of the Petitioner that he was taken into custody by the officials of the Respondent Directorate of Revenue Intelligence (DRI) on 24th August, 2011; that certain documents were also seized from his residence including certain cheque books; that he was kept in illegal custody for two days and was manhandled and tortured; that during the said custody he was made to deposit a sum of Rs. 38.50 by way of demand draft towards the dues from M/s Durga Apparels Pvt. Ltd., M/s Om Shreem Ananda Foods Pvt. Ltd., M/s Designer Innovation and M/s Three Pence Crafts in which firms he was a Director/partner; that nothing was due by the said firms; however the said monies were collected on the allegation of over invoicing and fraudulently drawn Duty Draw Back (DDB); that certain post dated cheques were also taken from him and on the basis whereof the officials of the Respondent DRI with the help of the Accountant of the Petitioner got prepared further demand drafts from the Axis Bank, Janak Puri, New Delhi and thus got deposited a total sum of Rs. 1.42 crores from the

Petitioner without authority or law.

3. The Petitioner states that he on 25th August, 2011 itself upon being released, retracted the statements extracted from him while in custody and also sought return of the post dated cheques which he was forced to sign and also informed the Axis Bank not to act on the basis thereof. It is however stated that notwithstanding the said instructions, the officials of the Respondent DRI with the help of the accountant of the Petitioner got the bank drafts prepared from the bank.

4. The Petitioner further informs that he also filed a criminal writ petition being W.P.(Crl.) No. 186/2011 in the Supreme Court and which came up for hearing on 15th September, 2011 when notice thereof was issued and arrest in connection with the said DRI proceedings stayed subject to certain conditions.

5. The counsel for the Respondent DRI appearing on advance notice has contended that the Petitioner had fraudulently drawn DDB by over invoicing and thus caused loss to the Public Exchequer and during investigation voluntarily paid the said amounts. It is stated that the investigation is still on.

6. The counsel for the Petitioner has contended that no monies could have been demanded from him without issuing the show cause notice. He contends that the exports were effected more than one year ago after due verification and the goods exported and payment received through the regular banking channel. He contends that the custom authorities having cleared the goods, without any proceedings being initiated by the custom authorities, the monies could not have been so extracted from him. He however states that the Petitioner is not pressing for refund of the monies at this moment and the monies may be retained by the Respondent DRI with itself and be not deposited with the customs authorities and on final adjudication he will make his claim for refund.

7. It has been enquired from the counsel for the Petitioner as to why the Petitioner on 25th August, 2011 or at any time thereafter not approach the Court for restraining the Respondents from acting on the basis of the cheques alleged to have been forcefully taken from him when it is the case of the Petitioner that he had on 25th August, 2011 itself made a claim therefore. There is no answer to the said question. It has further been enquired from the counsel for the Petitioner as to whether the relief in this regard was claimed in the proceedings before the Supreme Court and if not why.

8. The counsel for the Petitioner states that though reference to the cheques having been illegally obtained has been made in the proceedings before the Supreme Court but no relief in that regard was claimed. It is contended that the Supreme Court was approached only to restrain the arrest of the Petitioner and not regarding the cheques which had been illegally taken. The purport of contention is that it is for the Respondents to explain as to under what law and authority the said amount has been obtained from the Petitioner.

9. The gravamen of the case of the Petitioner is the coercion alleged to have been exercised. Else, it is admitted that the payment is through pay orders which were prepared with the help of the accountant of the Petitioner. The said question of coercion cannot be decided in writ jurisdiction. Therefore no purpose will be served in issuing formal notice of this petition or in keeping the petition pending. However if on assessment/adjudication, the amounts are not found due from the Petitioner, the Petitioner certainly would have a claim for refund thereof together with interest whatsoever.

10. Dismissed. No order as to costs.

CM No. 16365/2011 (for exemption).

Allowed, subject to just exceptions.

