
(1991) 03 CAL CK 0062
In the Calcutta High Court
Case No : Matter

Sk. Aftab

APPELLANT

Vs

Collector of Customs (Preventive)

RESPONDENT

Date of Decision : 07-03-1991

Acts Referred:

Customs Act, 1962 — Section 115(2)

Citation : (1992) 60 ELT 531

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Judgement

Ruma Pal, J.—The petitioners are claiming to be the owner of Truck No. WBL-4160. On 16-5-1990 the said truck was detained on the allegation that it was carrying contraband goods. A show cause memo was issued on 30th October 1990 in which the truck has been valued at Rs. 1 lakh. It appears from the statement enclosed in the Show Cause Notice that according to the driver the contraband goods were loaded in the said truck on the instructions of one Kasem alias Kasem Bhai of Katapukur, Ramayan Road, Calcutta-88. The said Kasem was stated to be the owner of the truck. It also appears that there is no such person as Kasem and that from the RTA Office, Beltolla, Calcutta, the names of the petitioners were recorded as the owners of the truck. By a letter dated 14-11-1990 the petitioner No. 2 requested inter alia for release of the truck and for diverse documents for the purpose of replying to the show cause notice. It is alleged that no reply was given to the letter. By two separate letters dated 10-1-1991 the petitioners again asked the Assistant Collector of Customs for release of the truck and for the documents. There was no reply to these letters either. In the circumstances, the petitioners have asked this Court for release of the truck relying upon a circular issued by the Collector of Customs in which the release of vehicles for carriage of goods against bonds has been directed as matter of policy, "in view of the provisions of Section 115(2) of the Customs Act, 1962 under which the adjudicating authority is bound to give an option to the owner to redeem the vehicles for payment of fine in lieu of confiscation and also

in view of the difficulty regarding the upkeep of the vehicles."

2. This circular has not been challenged by the respondents. It is not for the Court to question the correctness of such policy, nor can the respondents deviate from the same.

3. It is contended by the respondents that since the matter has been pending for sometime, the petitioner should be directed to reply to the show cause notice and that the truck should not be released by this Court unless the petitioners in addition to the bond in terms of the certificate referred to above, also paid some amount of money by way of cash. It has been stated that there is a definite allegation of complicity of the owners in the offences alleged.

4. It is not open to the Customs authorities to complain of the delay as it appears that they, themselves had not answered any of the letters written by the petitioners to them. There is no justification for detaining the truck since May 1990 in view of the circular issued by the Collector. No distinction has been drawn in the circular between a case where a show cause notice has been issued and a case where it has not. The claim of the respondents cannot exceed the value of the said truck even if the adjudication proceedings are decided against the petitioners, and the truck is directed to be confiscated u/s 115(2) of the Customs Act.

5. There is also no allegation that the petitioners would be unable to honour the bond if the order of confiscation is passed.

6. This application is therefore disposed of by the following order -

(1) The respondents will release the truck to the petitioners upon the petitioners furnishing a bond of Rs. 1 lakh in terms of the said circular. On furnishing the bond the vehicle should be released to the petitioners within 3 days thereof.

(2) The respondents will give the petitioner copies of the documents referred to in items 1, 2, 3, 4, 5, 6, 7 and 10 of the letter dated 14th November 1990 of the petitioner No. 2 if available within 1 week from date. The respondents will permit the petitioners to have inspection of the seized goods within 14-3-1991.

(3) The petitioners are to give their answer to the Show Cause Notice by 25-3-1991.

(4) The concerned authority will hear and dispose of the matter within a period of 2 weeks thereafter i.e., by 8th April 1991. In default of the petitioners answering the Show Cause Notice or if they do not participate in the adjudication proceedings, the concerned authority will be at liberty to proceed ex parte.

If the order of adjudication as far as the said vehicle is concerned is against the petitioners, the respondents will be at liberty to enforce the bond.

This order disposes of the writ petition. As no affidavit-in-opposition has been used by the respondents, it is recorded that the allegations contained in the

petition are not admitted. There will be no order as to costs.

All parties to act on a signed copy of the operative part of the judgment on usual undertaking.