Pawan Goel Vs. Collector of Customs

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Court : Delhi

Decided On : Nov-25-1991

Reported in : 46(1992)DLT261

Judge : V.B. Bansal, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 438

Appeal No. : Criminal Miscellaneous (Main) Appeal Nos. 2405, 2493 and 2494 of 1991

Appellant : Pawan Goel

Respondent : Collector of Customs

Advocate for Pet/Ap. : V. Chandrasekharan,; P.K. Jain and; Satish Aggarwal, Ad

Judgement :

V.B. Bansal, J.

(1) This order will dispose of Criminal Misc. (M) 2495/91 (Pawan Goel v. Collector of Customs, Crl. M (M) 2493 of 1991 (Sushil Goel v. Collector of Customs), and Crl. M.(M) 2494 of 1991 (B. Garg v. Collector of Customs), since they arise out of the same incident and so can be disposed of together conveniently.

(2) By way of these applications under Sec. 438 of the Code of Criminal Procedure the petitioners have prayed for being released in anticipation of their arrest in respect of the import of Brass Scrap 'Honey' pursuant to the bill of entry No. (01585 from Jordan by M/s Kunal Metals Pvt. Ltd. S/Shri Pawan Goel, Sushil Goel, B. Garg petitioners and Anil Goel are stated to be the directors of the aforesaid firm.

(3) The case of the petitioners has been that the Company had imported a consignment of Brass Scrap 'Honey' and the bill of entry was submitted through their agent for clearance. It has also been claimed that the goods in question imported by them are an Ogl item and do not require any import license for the import uf the same and thus they can be imported without any restriction as contemplated under the Import Export Policy. It has also been submitted that the goods were contained in two containers of 16.540 and a 6.700 M/Ts respectively and on examination of the containers the Appraiser at the office of the Assistant Collector of Customs was informed that seal number though intact did not tally with the seal number as brone on the documents in support of the good in question but in spite of this objection the containers were opened by the Appraiser and it was found that each container was having excess weight to the extent of 5 M/T. It has also been pleaded that even before the containers were opened the petitioners had sent a telex to the sender on 1st November, 1991 itself to the effect that there was difference in the seal and a reply was received that the goods under consideration were meant for other supplier but by mistake had been shipped to the petitioners. It is also pleaded that Anil Goel one of the directors was called for joining the investigation and has since been arrested after recording his statement under Sec. 108 of the Customs Act. Apprehending that they may also be arrested the petitioners have filed the present petitions.

(4) These applications have strongly been opposed by the respondent and a reply has also been filed by way of an affidavit of Ms. Meenakshi, Asstt. Collector of Customs, Icd, Pragati Maidan, New Delhi.

(5) It has, inter aha, been pleaded by the respondent that the Company had imported goods stated to be Brass Scrap weighing 33.240 M/Ts vide bill of entry

No. 10) 585 dated 25th October, 1991 and at the instance of the clearing agent of the Company the full examination was conducted on 6th November, 1991 when good were found to be other than Brass Scrap and were parts of Brass Burner as well as Brass Casting of Burners and they weighed 10.435 tons excess of the weight declared. It has, thus, been pleaded that M/s Kunal Metals Pvt. Ltd. imported goods other than those stated to be imported which were chargeable of duty of 100%+50%+15%+10% and in this way an attempt has been made by them to evade duty to the tune of Rs. 56 lacs approximately. It has further been pleaded that they came to know that the goods were sent to India by mistake on 4th November. 1991 but a telex is claimed to have already been sent on 1st November, 1991 for clarification which would clearly mean that they tried to create false evidence. A prayer has, thereforee, been made that the applications may be dismissed.

(6) I have heard learned Counsel for the parties and have also perused the documents filed.

(7) It is not disputed that the goods were imported into India from Jordan by M/s Kunal Metals Pvt. Ltd. by bill of entry No. 101585 which was claimed to be Brass Scrap 'Honey'. It is also not disputed that the weight has been found to be excess by about 10 M/Ts.

(8) Submission of learned Counsel for the petitioner has been that In fact the goods were not meant to be sent to the petitioners and there was a difference in the seal put on the two containers and that in spite of an objection having been raised by the clearing agent of the petitioners the goods have been opened. These facts have been controverter by learned Counsel for the respondent who has also referred to the Panchnama prepared in the presence of two independent witnesses. A perusal of the same shows that there was no such objection and the clearing agent was present at the time of opening the two containers.

(9) Learned Counsel for the petitioner has submitted that the goods have already been opened and statement of one of the directors has already been recorded and that the petitioners would be ready and willing to join investigation and that in fact there was no restriction to the Import of these goods. The question as to whether

there is any restriction to the import of the articles is disputed by learned Counsel for the respondent who has made a categorical statement that the goods imported into India are casting of brass burners. Merely because one of the directors has already been arrested, in my view, cannot be sufficient ground to grant bail in anticipation of their arrest to the petitioners. The competent authorities have a right to make investigation without there being any interference by the Court and anticipatory bail at this stage may hamper further investigation.

(10) Considering all the facts, I am clearly of the view that no case is made out for bail in anticipation of their arrest to the petitioners.

(11) As a result, the applications of S/Shri Pawan Goel, Sushil Goel and B. Garg stand dismissed. Petition dismissed.