

D N Patel, CJ & C Hari Shankar, J

Dated: December 02, 2019

Appellant Rep by: Mrs Anjali Jha Manish, Adv. with Mr Priyadarshi Manish, Adv. with Ms Jasmeet Kaur, Adv.

Respondent Rep by: Ms Ruchi Jain, Adv. for Mr Sarfaraz Ahmad, Adv. for R-1/UOI Mr Amit Bansal, SSC with Mr Aman Rewaria and Ms Vipasha Mishra, Adv. for R-2 and 4 Mr Ajit Sharma, Adv. for DRI

Cus - The petitioner has deposited Rs. 50 lakhs vide Demand Draft with the Respondent No.3 - It appears that the investigation is going on for the alleged violation of provision of Customs Act, 1962 wherein, the investigation agency has already recorded the statements of petitioner and the relevant persons under Section 108 of the Customs Act, 1962 - The amount which is deposited by petitioner cannot be ordered to be refunded by this Court because the argument canvassed by petitioner cannot be accepted that amount of Rs. 50 lakhs with respondent no. 3 was deposited under coercion because allegation of "coercion cannot be established by way of annexures in the writ petition" - In fact, cogent and convincing evidences are required to be led to establish coercion; as the investigation for alleged breach of provisions of Customs Act, 1962 is already going on and at this stage, it will be absolutely premature to come to a conclusion that the amount deposited by petitioner was not required to be deposited by the petitioner before the respondent no.3 - No reason found to pass any order in favour of petitioner for refund of the amount as prayed for in this writ petition: HC

Writ petition dismissed

JUDGEMENT

Per: D N Patel:

1. This writ petition has been preferred with the following prayers:

"(a) Issue a writ order or direction in the nature of mandamus to the Respondent No.3 - Directorate of Revenue Intelligence, not to take any coercive action against the Petitioner and its officials for recovery of any customs duty with regard to past imports during the pendency of ongoing investigation and before issuance of Show Cause Notice; and/or

(b) Issue a writ order or direction in the nature of mandamus to the Respondent No. 3 to refund the amount of Rs.50 Lakhs collected in the form of demand draft bearing No.016594 dated 16.10.2019 of Rs.30 Lakhs, demand draft No. 016598 on 11.10.2019 for Rs.10 Lakhs and demand draft No. 016607 dated 21.10.2019 for

Rs.10 Lakhs collected by the Directorate of Revenue Intelligence, Headquarter, New Delhi from the Petitioner against the past import without issuing any Show Cause Notice for demand of duty;

(c) Pass such other order or further order or orders as this Hon'ble Court may deem fit and proper under the circumstances of the case."

2. Having heard the learned counsel for the petitioner and looking to the facts and circumstances of the case, it appears that this petitioner has deposited Rs. 30 lakhs vide Demand Draft bearing no. 016594 dated 11th October, 2019, Rs. 10 lakhs vide Demand Draft bearing no. 016598 dated 16th October, 2019 and Rs.10 lakhs vide Demand Draft bearing no. 016607 dated 21st October, 2019 with the Respondent No.3. In all, the petitioner has deposited Rs. 50 lakhs with the Respondent No.3.

3. It appears that the investigation is going on for the alleged violation of the provision of Customs Act, 1962 wherein, the investigation agency has already recorded the statements of the petitioner and the relevant persons under Section 108 of the Customs Act, 1962.

4. Learned counsel for the petitioner submitted that there are retraction-statements made by the persons, whose statements have been recorded under Section 108 of the Customs Act, 1962.

5. Be that as it may, the amount which is deposited by the petitioner cannot be ordered to be refunded by this Court, at this stage, because –

(a) we do not accept the argument canvassed by counsel for the petitioner that amount of Rs. 50 lakhs with respondent no. 3 was deposited under coercion because allegation of "coercion cannot be established by way of annexures in the writ petition". In fact, cogent and convincing evidences are required to be led to establish coercion.

(b) as the investigation for the alleged breach of provisions of the Customs Act, 1962 is already going on, we do not wish to observe anything in favour or against this petitioner for the statements recorded under Section 108 of the Customs Act, 1962, which are otherwise admissible in evidence.

(c) retraction of a statement is one thing which does not, inevitably and in every case, necessarily affect the evidentiary value of the statement, recorded under Section 108 of the Customs Act, 1962.

(d) at this stage, we are neither appreciating the statement recorded under Section 108 of the Customs Act, 1962, nor we are appreciating the retraction of the petitioner's statement recorded under Section 108 of the Customs Act, 1962.

(e) at this stage, it will be absolutely premature to come to a conclusion that the amount deposited by the petitioner was not required to be deposited by the petitioner before the respondent no.3.

(f) the illegality or otherwise of the deposition of the aforesaid amount depends upon variety of factors like issuance of the notices by the respondents for the breach of provisions of the Customs Act, 1962, the voluntary nature of deposition by the petitioner, sometimes retracted statement may not be accepted by the respondent etc., or there may be permutation and combinations of the aforesaid facts also.

(g) the petitioner can always file a suit for recovery of the aforesaid amount from the respondent no.3.

6. In view of the above reasons, we see no reason to pass any order in favour of the petitioner for refund of the amount as prayed for in this writ petition.

7. So far as prayer (a) of the writ petition is concerned, there is only a presumption that the respondent is going to take coercive action against this petitioner.

8. We expect from the respondent that they shall act in accordance with law, rules, regulations and Government policy, applicable to the facts of the case, while investigating the case of the petitioner.

9. With these observations, this writ petition is hereby dismissed.