



GAHC010031182023

Page No.# 1/14



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/916/2023

MD. KITAB ALI
S/O- DANECH SEKH, PROPRIETOR OF INDIAN HAIR, R/O- VILL- AND P.O.
TAKIPUR, P.S. REJINAGAR, DIST.- MURSHIDABAD, PIN- 742189, WEST
BENGAL

VERSUS

THE UNION OF INDIA AND 2 ORS
REP. BY THE SECY., MINISTRY OF FINANCE (DEPTT. OF REVENUE)
COMMISSIONERATE OF CUSTOMS (PREVENTIVE), NORTH EAST REGION,
SHILLONG

2:THE SUPERINTENDENT/APPRaiser/SENI OR INTELLIGENCE OFFICER
CUSTOM HOUSE
15/1 STRAND ROAD
KOLKATA

3:THE ASSISTANT COMMISSIONER
CUSTOM DIVISION
N.P. PATH
GUWAHATI 78100

For the Petitioner(s)	: Mr. A. C. Buragohain, Sr. Advocate : Ms. M. Borah, Advocate
For the Respondent(s)	: Mr. S. C. Keyal, Advocate



**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 27-07-2023

1. The Petitioner herein is aggrieved by the action of the Respondent Authorities in not releasing the seized/retained 16 nos. bags of damaged hair to the Petitioner for which the instant writ proceedings has been initiated.

2. The facts of the instant case as could be discerned from the pleadings on record is that the Petitioner claims to be in the business of purchasing and selling of damaged human hair in the name and style of a Firm namely "Indian Hair" having its office at Takipur Murshidabad, West Bengal. From Annexure-1 of the writ petition, it appears that the Petitioner was issued a Trade Registration Certificate for carrying on the business of human hair which is valid upto 2025. It is further seen from Annexure-3 to the writ petition that the Petitioner is registered with the GST Authorities and allotted Registration No.19AVXPA5693B1Z7 favouring his trade name "Indian Hair". It further appears from the records that human hair are collected from door to door and small shops by local ferry and handed over to the Petitioner in his shop. The Petitioner upon purchase of the said human hair, stocks them in his godown located in M/s Indian Hair, village Takipur, Rejinagar, Murshidabad, West Bengal, 742189.

3. It is the case of the Petitioner that in course of his business, on or about 25.05.2022, the Petitioner sent the consignment of 16 nos. of bags of damaged human hair (hereinafter referred to as "the goods in question) from Sealdah Railway Station to Guwahati Railway Station through a transport agent

namely Maa Kali Enterprise, sister concern of "Srishti Enterprise" who booked the goods in question for transportation by Railways. It is the further case of the Petitioner that the Transport agent namely Maa Kali Enterprise booked the goods in question and issued voucher No.2014-681348(PWB/GHY-GHY-Guwahati) dated 25.05.2022. The total weight of the damaged human hair in the 16 nos. of bags was mentioned as 356 K.G. and each packet was stated to contain 22.250 K.G. of hair. The total value of the said damaged hair was stated to be Rs.16,37,600/-. This aspect of the matter can be seen from a perusal of Annexure 7, 8 and 9.

4. It is the further case of the Petitioner that his agent was supposed to collect the said consignment from Guwahati Railway Station. However to the surprise of the Petitioner, the said consignment of 16 bags of damaged human hair i.e. the goods in question were seized in Guwahati Railway Station on or about 27.05.2022 by the Customs Officials. When the Petitioner came to learn about the same, he produced before the Customs Office at Guwahati, in response to the notice issued, all the documents regarding the ownership of the goods in question sent by him from Kolkata to Guwahati. It is also the case of the Petitioner that the Petitioner has produced the documents of the transport agent who had booked the materials on behalf of the Petitioner to Guwahati. The Petitioner also claims to have submitted the relevant documents relating to payment of GST, Taxes etc. of the said materials. It is the further case of the Petitioner that the Customs Officials did not furnish any seizure list of the retained/seized goods in question though the Petitioner has insisted upon to give the seizure list and/or any documents. Pursuant to the summons issued by the Customs Officials, in terms with Section 108 of the Customs Act, 1962 (for short "the Act of 1962") the Petitioner attended the said Office and

furnished all the documents. During the course of his interrogation, the Custom Officials also enquired with the Petitioner about the address of the consignee/the prospective buyer. The petitioner accordingly gave the name and address of the prospective buyer i.e. one Lalchand Shekh, who stays at Jalukbari, Masjid Gali, Guwahati. At this stage, this Court finds it relevant to take note of the records produced by the learned Standing counsel for the Customs Department. In the records, the enquiry as regards the persons involved with the goods in question are detailed.

5. The said Lalchand Shekh appeared before the Custom Office on 21.09.2022 and stated that he was planning to buy the said goods from the Petitioner. On a specific question being asked to him, for what purpose he was planning to use the said human hair, the said Lalchand Shekh stated that he was planning to sell the said goods to one Rabiul Chand, proprietor of A.R. Traders, Jalukbari, Katia Dolong, Guwahati who is a trader of human hair in Guwahati.

6. Thereupon, the Customs Officials issued summons to the said Rabiul Chand. Rabiul Chand appeared in pursuance to the said summons on 30.09.2022. During his interrogation, the said Rabiul Chand stated that he knew both the Petitioner as well as Lalchand Shekh and had also admitted that Lalchand Shekh had told him that he was bringing 16 nos. of bags of human hair. The said Rabiul Chand further stated that he buys human hair from local ferry and sell it to local customers. He further stated that Lalchand Shekh did not bring the 16 nos. of bags to him. The said Rabiul Chand had also produced his GST Registration Certificate, Trade License issued by the Guwahati Municipal Corporation, the certificate pertaining to Importer-Exporter Code,

issued by the Government of India, Ministry of Commerce and Industry as well as the GST Registration which amongst others shows that the said Rabiul Chand carries on the business by the trade name "A.R. Traders" in respect to various goods including human hair, unworked, whether or not washed or scoured; waste of human hair.

7. It further reveals from the said records that one Sri. Babul Sarkar was also summoned by the Custom Officials of the Kolkata, West Bengal on 17.10.2022. During the course of his statement so recorded, he stated that he is the proprietor of M/S Babul Transport and his firm is registered with the GST authorities. On a specific question put to him as to whether he provided transport service for transporting of human hair to Guwahati, he stated that after collecting the human hair from the Petitioner's firm i.e. M/s Indian Hair, the said goods was transported from Rejinagar to Kolkata by road. After that he handed it over to the M/s Srishti Enterprise for transporting it from Sealdah Railway Station to Guwahati Railway Station from where it was supposed to be collected by the Petitioner. The said Babul Sarkar also produced GST Invoice No.38 dated 25.05.2022 for confirmation of this service. On a specific question being put to him as to whether he has any relationship with the sale of human hair at Guwahati and as to whether the seized goods belonged to him, the said Babul Sarkar stated that he was not involved in trading or selling or purchase of any human hair. He stated that he just collected it from the proprietorship firm of the Petitioner i.e. M/s Indian Hair and handed it over the M/s Srishti Enterprise for further transportation to Guwahati.

8. Now, coming back to the pleadings of the Petitioner, it is the case of the Petitioner that in spite of the above, the Respondent Authorities have not

released the seized/retained goods in question for which he had approached this Court. It is the further case of the Petitioner that the Respondent Authorities are harassing the Petitioner for the reasons best-known.

9. The Respondents filed an affidavit-in-opposition through Principal Commissioner of Customs (P), NER, Shillong. In the said affidavit-in-opposition, it was mentioned that on 27.05.2022, the Officers of Anti-smuggling Unit, Customs Division, Guwahati, acting on specific intelligence conducted a search operation at the Railway Station, NER, Guwahati at around 21:30 Hrs and detected 16 nos. of HDPE bags lying on Platform No.4. On verification of the bags which was done in the presence of two independent witnesses, it was found that the said 16 nos. of HDPE bags contained human hair. It was further stated that on further investigation, it was found that the said goods had been offloaded from Train No.13174 Kanchanjunga Express on 27.05.2022 at Platform No.4 and the owner of the said 16 nos. of HDPE bags containing human hair did not turn up though the officers waited for sufficient time. It was further mentioned that as per the intelligence, 16 nos. of HDPE bags containing human hair had been brought to Guwahati for onward transportation to Imphal and the same would be further illegally exported to Myanmar via Moreh. It is on the basis of that the Customs Officers formed a reasonable belief that the goods are liable to be confiscated under Section 113(b) of the Act of 1962 and therefore seized the 16 nos. of HPDE bags of Human Hair under Section 110(1) of the Act of 1962, under intimation to the C.S (Parcel), NF Railway, Guwahati Railway Station. It was further mentioned that as the case was booked as "UNCLAIMED", a Notice (Export) was sent to the C.S Parcel, NF Railway, Guwahati Railway Station for display in their notice board. In the meantime, many parties came to the Guwahati Customs Division

claiming ownership of the said goods. It was further mentioned that when the parties were asked to submit their formal claims in writing, none of them claimed the ownership of the said goods formally. However, on 09.06.2022, the Petitioner submitted an application claiming the ownership of the said seized 16 nos. of HDPE bags containing human hair along with copies of PAN, AADHAR, payment of Professional Taxes, Govt. of West Bengal, Trade License, GST Registration Certificate, GST Invoice issued by Babul Transport, Road Challan dated 25.05.2022 issued by the Petitioner in the name of Babul Sarkar, Sealdah, Vehicle Number-WB19H667. Thereupon, a summons was issued on 06.07.2022 to the Petitioner for appearance on 07.07.2022 at 11 A.M at the office of the Assistant Commissioner, Customs Division. The Petitioner appeared before the Superintendent (A/S) of Customs Division Guwahati on 07.07.2022 at 11 A.M and inter alia he stated that he planned to sell the said goods to Lalchand Shekh who stays in Jalukbari, Masjid Gali, Guwahati. On the basis of that, the said Lalchand Shekh was issued a summons on 16.09.2022 and was asked to appear on 21.09.2022 at 11 A.M. The said Lalchand Shekh upon appearing stated that he was planning to sell the said goods to one Rabiul Chand, A.R. Traders, Jalukbari. The said Rabiul Chand who is a trader of human hair in Guwahati was issued summons for appearance on 30.09.2022 who further appeared. The details of the statements so recorded have already been dealt with in the previous segments of the instant judgment.

10. In paragraph No.6 of the said affidavit-in-opposition, it has been mentioned that the case was registered as "UNCLAIMED" as no one has turned up to claim the ownership of the goods at the time of seizure. It was further mentioned that the Petitioner though submitted some documents regarding ownership of the goods in question which was sent to Kolkata Customs for

verification and verification was also conducted by Guwahati Customs Division. However, there were certain discrepancies noticed in the documents submitted by the Petitioner and the Petitioner could not prove the ownership of the said goods beyond doubt. It was further stated that human hair, unworked, whether or not washed or scoured; waste of human hair; was put under restricted category on the basis of a notification bearing No.51/2015-2020 dated 25.01.2022 and as such, the Respondent Customs Authorities have reasons to believe that the said human hair would be illegally exported through Moreh, Aizawl Border Town into Myanmar and further to China. It was further stated that the Customs Department is yet to take final decision regarding the claim of ownership by the Petitioner and to issue Show Cause notice as per the provisions of the Act of 1962.

11. To the said affidavit-in-opposition, an affidavit-in-reply was filed by the Petitioner wherein it was stated that the Petitioner has produced all the documents as regards the ownership of the goods and further has also provided the names of the prospective buyer of the hair. The said prospective buyer of the hair namely Shri Lalchand Shekh has also stated to whom he would sell and the said purchaser namely Shri Rabiul Chand has also in pursuance to the summons stated that he was supposed to purchase the said hair which Lalchand Shekh was to bring to him, however the said 16 nos. bags of damaged hair was not brought to him. It is also relevant to mention that each and every allegations made in the affidavit-in-opposition by the Respondents have been duly dealt with and explained by the Petitioners in the affidavit-in-reply.

12. When the instant writ petition was listed before this Court on

19.07.2023, this Court directed the Standing counsel appearing on behalf of the Customs to produce the basis on which the Customs Officer had formed a reasonable belief that the goods in question were for onward transportation to Imphal and would be further illegally exported to Myanmar via Moreh. On 21.07.2023, the records were duly produced. The matter was heard and the question which arose as to whether the goods which have been seized could be seized in terms with Section 110 read with Section 113 of the Act of 1962 and accordingly the matter was directed to be listed today i.e. on 27.07.2023 and the matter was duly heard.

13. This Court heard the learned counsels for the parties and has perused the materials on record. The first question which arises for consideration is whether the seizure of the goods in question by the Customs Authorities was lawful. It is relevant to take note of that a perusal of Section 110 of the Act of 1962 stipulates the power of seizure of goods, documents and things. The condition precedent for the exercise of such power is that the Proper Officer has to have reasons to believe that the goods are liable to confiscation under the Act of 1962. Chapter XIV of the Act of 1962 relates to confiscation of Goods and Conveyances and imposition of penalties. Though there are various provisions relating to confiscation, but for the purpose of the instant case, Section 113 of the Act of 1962 is relevant.

14. The question therefore arises as to whether goods in question i.e. the human hair could have been confiscated under Section 113 of the Act of 1962 on the ground that the said goods are attempted to be improperly exported. At this stage, this Court finds it relevant to take note of the affidavit-in-opposition filed by the Respondent Custom Authorities. In the said affidavit, it has been

mentioned that the goods in question can be confiscated under Section 113(b) of the Act of 1962. Clause (b) of Section 113 of the Act stipulates export goods shall be liable for confiscation when such goods are attempted to be exported by land or inland water through any route other than a route specified in a notification issued under Section 7(c) of the Act of 1962 for export of such goods. Therefore, for applicability of Clause (b) of Section 113 of the Act of 1962, it is the requirement of law that the goods are sought to be exported through a route other than a route specified by the Board in the Official Gazette. The question therefore arises as to whether there is any such notification prohibiting export of goods in question through the land border of Moreh or to Myanmar. The Respondent Customs Authorities have however not produced any such notification in respect to the goods in question except a notification dated 25.01.2022 which only puts the goods in question within a restrictive policy that too issued by the Department of Commerce, Government of India. Under such circumstances, it is the opinion of this Court that the ground upon which the Respondent Customs Officials has reasons to believe that the goods in question are liable to be confiscated is not tenable.

15. It is also relevant to take note of that the goods in question i.e. the damaged human hair contained in the 16 nos. of HDPE bags are neither prohibited goods nor they are specified goods in terms with Section 11H(e) of the Act of 1962 inasmuch as no notification has been issued in respect to the said goods in question under Section 11-I of the said Act of 1962. This Court had also made a specific query upon the learned counsel Mr. S. C. Keyal as to whether the goods in question would come within the ambit of the "specified goods" in terms with Section 11H(e). The learned counsel submitted that to the information of the Respondents, there has been no notification in respect

to human hair in terms with Section 11-I of the Act of 1962.

16. This Court further enquired with the learned counsel appearing on behalf of the Respondents as to whether the goods in question i.e. the human hair in the present facts could be confiscated under any of the Clauses of Section 113 of the Act of 1962. The learned counsel appearing on behalf of the Respondents fairly submitted that taking into account that the goods in question are not prohibited goods as well as specified goods, the said goods cannot be confiscated in the present facts of the instant case. The logical conclusion which comes to light from the above is that the goods in question in the present facts cannot be confiscated and accordingly the exercise of powers under Section 110 of the Act of 1962 do not arise.

17. The learned counsel appearing on behalf of the Respondents however submitted that the goods in question were lying in the railway Platform No.4 of the Guwahati Railway Station in the "UNCLAIMED" status. On the basis of Intelligence Report, the said goods were seized. It is the submission of the learned counsel appearing on behalf of the Respondent Authorities that as the Petitioner has failed to produce proper documents evidencing the ownership of the said goods, a direction issued by this Court to release the goods to the Petitioner may affect the rights of the actual owner if at a later stage he approaches the Respondent Customs Officials and is successful in proving his ownership. The learned counsel for the Respondents submitted that therefore no directions ought to be issued for release of the goods to the Petitioner in the present circumstances and the authorities be given the liberty to decide on the ownership of the goods in question.

18. This Court have perused the records which were produced wherein the

statements of the various persons were duly recorded. This Court has also perused the documents so produced by the Petitioner, Shri Babul Sarkar as well as M/s Srishti Enterprise. From the above, it prima facie shows that M/s Indian Hair i.e. the proprietorship firm of the Petitioner had handed over the goods in question to Shri Babul Sarkar who handed it over to the agent of M/s Srishti Enterprise. The said M/s Srishti Enterprise sent the goods to Guwahati by their leased personal van and thereupon the goods were seized at Guwahati. A conjoint reading of the road challan issued by "Indian Hair" in favour of Shri Babul Sarkar; the receipt issued by Maa Kali Enterprise, an agent of M/s Srishti Enterprise; the railway receipt as well as the GST Invoice Bill issued by M/s Srishti Enterprise prima facie shows that the Petitioner herein is the owner of the goods in question i.e. the 16 nos. of HDPE bags containing human hair of approximately 356 K.G.

19. This Court cannot also be unmindful of the submissions so made by the learned counsel appearing on behalf of the Respondents that if after the release of the goods in question, at a later stage the original owner appears and proves his ownership with better and convincing documents, the Respondent Authorities would be in great difficulty and it may lead to litigations. It is also relevant at this stage to take note of that the goods in question are human hair and it was seized almost a year back. If the said human hair is allowed to be kept not in a proper condition, the said human hair may lose its value as well as its use.

20. Taking into account the above, this Court is of the opinion that the competing equities can be balanced if the goods in question i.e. the 16 nos. of HDPE bags containing human hair are released to the Petitioner on submission

of a Bank Guarantee of value of Rs.16,37,600/-. This Court further is of the opinion that the said bank guarantee should be valid for a period of 6 (six) months from the date of its submission and within this period, the Respondent Customs Authorities would be at liberty to issue appropriate notices for deciding the issue of ownership of the goods in question. This Court is also of the opinion that within this period of 6 (six) months, if no person proves his ownership of the goods in question, nothing would further survive as regards any action to be taken in respect to the goods in question. On the other hand, if during this period any person proves ownership over the said goods in question, the Respondent Customs Authorities shall issue notice to the Petitioner informing him about the said fact. It would be within the jurisdiction of the Respondent Authorities to invoke the bank guarantee if the Petitioner fails to prove a better title over the goods in question than the other person. It is made clear that the bank guarantee cannot be invoked by the Respondent Authorities prior thereto.

21. Accordingly, the writ petition stands disposed of with the following directions:

- (a) The Respondent Customs Authorities shall release the goods in question i.e. the 16 HDPE bags containing human hair to the Petitioner forthwith upon the Petitioner furnishing a Bank Guarantee favouring the Respondent No.3 of an amount of Rs.16,37,600/-.
- (b) The Bank Guarantee shall remain valid for a period of 6 (six) months from the date of submission.
- (c) The Bank Guarantee can be invoked only if a third party proves a better



title over the goods in question than that of the Petitioner. It is made clear that the Respondent Authorities shall issue notice to the Petitioner prior to invoking the Bank Guarantee.

(d) The Respondent Authorities shall be at liberty to take such steps as required during this period of 6(six) months for ascertaining as to whether any other person has a better title over the goods in question.

22. The records so produced by Mr. S. C. Keyal is returned.

JUDGE

Comparing Assistant