

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

...

OWP no.251/2015
c/w OWP no.1110/2015

Reserved on: 23.05.2023

Pronounced on: 16.06.2023

M/s Ali Shah through Arif Ahmad Shah

.....Petitioner(s)

Through: Mr Nissar A. Bhat, Advocate

Versus

Union of India and others

.....Respondent(s)

Through: Mr T.M.Shamsi, DSGI

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Show cause notice bearing no.SES/35/ADC/JC/2014-15 dated 19th January 2015, impugned in OWP no.251/2015, has issued by the office of Commissioner of Customs (SIIB), Air Cargo Export, New Custom House, Near IGI Airport, New Delhi (Special Intelligence & Investigation Branch). As is evident from the said show cause notice, which is impugned in this petition, the goods, viz. Pashmina Embroidered Ladies Shawls were presented for clearance for export on 28th November 2014. On its examination it was observed that the goods being made of wool required No Objection Certificate from Wildlife Authorities. The Inspector, Wildlife Crime Control Bureau (Northern Region) New Delhi examined the consignment and it was observed that

out of 33 shawls, 20 shawls appear to be mixture of Shahtoosh. The fact as to whether the goods contained objectionable yarn, the same was sent for forensic test. The Regional Deputy Director, Wildlife Crime Control Bureau (NR) vide letter no.10-10/WN/14/325 dated 29th May 2014 informed all suspected twenty pieces of shawls contained hair of Tibetan Antelope (*Pantholopes Hodgsoni*), which is prohibited and as such, were seized under and in terms of Section 110 of Custom Act, 1962, as there was reason that they were liable for confiscation under the Customs Act, 1962. So, the items were seized at New Delhi, impugned show cause notice has been issued at New Delhi.

2. Maintainability of instant writ petition has been raised during course of arguments as it is urged that cause of action has arisen at New Delhi inasmuch as the consignment/goods have been seized at New Delhi and show cause notice has also been issued by authority at New Delhi, so the jurisdiction lies before the forum/courts at New Delhi and not before the courts/forum in State/U.T. of J&K.
3. To the above contention, learned counsel for petitioner has stated that part of cause of action has arisen within the territorial jurisdiction of this Court as the consignment/goods were sent from Srinagar, so this Court has jurisdiction to try and entertain the instant writ petition. In support of his submissions, learned counsel for petitioner has placed reliance on *Lt Col Khajuri Singh v. Union of India, AIR 1961 SC 532*; *Siemens Ltd v. State of Maharashtra and others, (2006) 12 SCC 33*; *Rajendran Chingaravelu v. R.K.Mishra and others, (2010) 1 SCC 457*; *Nawal Kishore Sharma v. Union of India, (2014) 9 SCC 329*; *Cement*

Workers' Mandal v. Global Cements Limited and others, (2019) 20 SCC 517; and Shanti Devi v. Union of India and others, (2020) 10 SCC 766.

There is no force in the submissions of learned counsel for petitioner, particularly when the judgements relied upon by him are distinguishable in facts vis-à-vis case in hand.

It is worthwhile to mention here that the Government of India is within the territories of every High Court in India, the only High Court which has jurisdiction to issue writ or order or directions under Article 226 against it, is the one within the territory under which the act or omission against which relief was sought took place. This view has been taken and given by the Supreme Court in *Lt Col Khajuri Singh v. Union of India* (supra), which has been relied upon by learned counsel for petitioner. In the said case, the Supreme Court has held that the act against which the relief has been sought was clearly performed at Delhi, therefore, the Jammu and Kashmir High Court cannot exercise its jurisdiction under Article 226.

4. There is, thus, force in the submission of respondents 1 to 4 that cause of action has arisen within the territorial jurisdiction of Delhi and not State/UT of J&K, so it is the courts at Delhi where the petitioner can approach with his plea. If petitioner has any grievance vis-à-vis show cause notice, he has a right to contest impugned show cause notice before Commissioner of Customs (Export) New Delhi at the time of its adjudication and that apart petitioner has also an opportunity to file an appeal against the order of Commissioner of Customs under Section

129 of the Customs Act 1962 before the Appellate Tribunal. In that view of matter, it would have been apt for petitioner to, instead of filing the instant writ petition under Article 226 of the Constitution of India before this Court, approach appropriate Court/forum, in whose jurisdiction consignment/goods have been seized at New Delhi, show cause notice issued at New Delhi and remedy is available under Customs Act, 1962.

5. It may be mentioned here that the act of respondents in seizing consignment/goods took place in Delhi, followed by other events including issuance of show cause notice etc., so it is the courts/forums at Delhi where the petitioner can lay his claim or raise his grievances.

Law on the subject is already settled in *Oil Natural Gas Commission v. Utpal Kumar Basu & ors.*, 1994 (4) SCC 711; *Union of India v. Adani Exports* 2002 (1) SCC 567; *Ambica Industries Versus Commissioner of Central Excise*, (2007) 6 SCC 769; and *Eastern Coalfields Ltd. and others v. Kalyan Banerjee*, (2008) 3 SCC 456.

6. In view of above, the instant writ petition is without any merit and is, accordingly, **dismissed**. Interim direction, if any, shall stand vacated.
7. Insofar as writ petition, being OWP no.1110/2015, is concerned, the petitioner seeks quashment of communication no.1-270/WCCB/NR/14/ 153 dated 13th April 2015 addressed by respondent no.2 to respondent no.3, FIR no.RC220/2015/E-0007-CBI/EO-II/New Delhi under Sections 40, 49, 49-B and 58 read with Section 51 of the Wildlife (Protection) Act 1972 registered by respondent no.3 against petitioner

as also the notice bearing no.Rc.220/2015/E0007-CBI/EO-II/IND dated 12th June 2015, issued by respondent no.4 to the petitioner along with proceedings initiated against him. Petitioner also prays for a direction to respondents not to proceed against petitioner on the basis of communication dated 13th April 2015, FIR no.RC220/2015/E-0007 and notice dated 12th June 2015 issued by respondent no.4 to petitioner.

8. As noted herein above, in the instant case, the consignment/goods have been seized at Delhi, proceedings emanating as a consequence of seizure of prohibited/banned consignment/goods have been initiated at Delhi, so it would be appropriate for petitioner to approach the courts/forums at Delhi.
9. Resultantly, writ petition (OWP no.1110/2015) is without any merit and is accordingly **dismissed**. Interim direction, if any, shall stand vacated.

Srinagar

16.06.2023

Ajaz Ahmad, PS



(Vinod Chatterji Koul)
Judge

Whether approved for reporting? Yes/No.