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2022 (0) AIJEL-HC 244460

GUJARAT HIGH COURT

Hon'ble Judges: Ilesh J. Vora, J.

S.K. Industries Through Sajid Ibrahim Memon Versus State Of Gujarat

SPECIAL CRIMINAL APPLICATION No. 1081 of 2022 ; *J.Date :- MAY 04, 2022

- CONSTITUTION OF INDIA Article - 226
- INDIAN PENAL CODE, 1860 Section - 285 , 278 , 114
- ESSENTIAL COMMODITIES ACT, 1955 Section - 3 , 7 , 11
- CUSTOMS ACT, 1962

Cases Referred To :

1. Sundarbhai Ambalal Desai Vs. State Of Gujarat, 2002 10 SCC 283 : 2003 (2) GLR 1337 : 2003 (1) GLH 307 : 2003 (2) GCD 1507 : 2003 (2) CLR 302

Equivalent Citation(s):

2022 JX(Guj) 705 : 2022 AIJEL_HC 244460

JUDGMENT :-

1 Rule. Ld. APP waives Rule for the respondent State.

2 By way of present petition under Articles 226 and 227 of the Constitution of India, the petitioner being an authorized person of S.K. Industries, challenges the impugned orders dated 26.10.2021 and 08.12.2021 passed by the Courts below, rejecting the release of muddamal base oil.

3 The petitioner herein is in business of import and trading of base oil. The seized base oil, imported after completion of mandatory process as contemplated under the Customs Act and Rules thereof. On 07.09.2021, goods reached to Kandla Port and thereafter, the same was transported in four tankers from Kandla Port to the C Oil Exim Pvt. Ltd., Bhachau, Kachchh, for the purpose of storage of the goods, for which e-challan was obtained. Before it could reach at the destination, the police detained the vehicles and base oil on the ground that, it has been transported without requisite licenses and no objections and thereby, committed an offence under Sections 285, 278 and 114 IPC and Section 3, 7 and 11 of the Essential Commodities Act, for which, FIR came to be registered and accordingly, vehicle as well as base oil have been seized. The petitioner herein moved an application before the trial Court for releasing of muddamal, which came to be rejected vide order dated 26.10.2021 and the same was challenged before the Sessions Court concerned by preferring Revision Petition, which came to be rejected vide order dated 08.12.2021. Aggrieved with the impugned orders passed by the Courts below, petitioner has come up before this Court.

4 Learned counsel for the petitioner Mr. A.A. Ansari submitted that the learned trial Court has released four tankers, however, the prayer to release base oil has not been considered. In this context, it was submitted that, the petitioner company after complying all mandatory provisions imported the seized muddamal and therefore, there is no any violation of law and rules thereof. It was submitted that, due to seizure of the goods, the petitioner is facing difficulties in his regular business. If the muddamal is lying in the police station, it will get spoil and keeping it in the police station is not going to advance the cause of justice. The petitioner herein will have to incur unnecessary expenses for four tankers that are kept idle at the police station. Therefore, it was urged that, seized muddamal base oil may be released on any terms and conditions.

5 On the other hand, learned APP Mrs. Krina Calla, for the State vehemently opposed the petition contending that, the learned Courts below have not committed any error of law while rejecting the applications and therefore, no case is made out for warranting interference by this Court to exercise extraordinary jurisdiction.

6 Having heard learned counsel for the respective parties and upon perusal of the findings of the Courts below, this court is of view that, it is settled law that, the articles seized by the police, may be released to the person, who in the opinion of the Court, is lawfully entitled to claim, after preparing detailed panchnama of

such articles as well as photographs of such articles and security bond. It is observed by the Apex Court in the case of Sundarbhai Ambalal Desai Vs. State of Gujarat [(2002) 10 SCC 283], that, case property like vehicles, machines etc. found lying in the police station for long time, would become junk and loosing their value and therefore, powers under Section 451 of the Cr.P.C should be exercised promptly, so that there may not be further chance of tempering with the articles etc.

7 In the facts of the present case, after following procedure, the seized base oil, imported by the petitioner herein and after clearance of the port authority, it was about to reach at the destination. Pursuant to the FIR, samples were taken from the seized oil. The petitioner herein is authorized person of the company. In this background facts, this Court is of the view that the Courts below have not properly exercised their powers judiciously. It is required to be considered that, the expeditious and judicious disposal of the case property would ensure that the owner of the article would not suffer because of its remaining unused. Court or police would not require to keep the article in safe custody, as it would save the cost of storage etc.

8 For the foregoing reasons, petition is allowed and the impugned orders dated 26.10.2021 and 08.12.2021 passed by the Courts below are hereby quashed. The muddamal seized oil (103120 Kgs.) amounting to Rs.67,02,800/- shall be released/handover to the petitioner on the following conditions:-

(I) The petitioner shall furnish a solvent surety to the tune of 1.5 times of value of seized oil as per the panchnama prepared by the Investigating Officer

(ii) Before handing over the possession, detailed panchnama in that regard if not drawn, shall be drawn for the purpose of trial.

(iii) the production of the muddamal should not be insisted during the trial as sample along with the photographs and panchnama would be sufficient evidence at the stage of trial.

(iv) The petitioner shall use the seized muddamal strictly in accordance with the applicable Acts and Rules thereunder.

Rule is made absolutely. Direct service is permitted.