

(1990) 01 CAL CK 0031**Calcutta High Court****Case No:** C.R. 505 (W) of 1981

Goodwill Tea and Industries
Limited and Another

APPELLANT**Vs**

Union of India (UOI) and Others

RESPONDENT**Date of Decision:** Jan. 25, 1990**Acts Referred:**

- Constitution of India, 1950 - Article 226

Citation: (1990) 27 ECC 240**Hon'ble Judges:** Susanta Chatterji, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Susanta Chatterji, J.

This present Rule is heard alongwith C.R. No. 503(W) of 1981. It appears that by order dated 20.7.89 Civil Rule No. 503 (W) of 1981 was discharged. However, upon mentioning, the learned lawyers of the respective parties were allowed to make their submissions on the merit of the case and practically order dated 20.7.89 was recalled and again both the matters have been heard on merit.

2. It appears from the present writ petition filed by Messrs. Goodwill Tea and Industries Limited that on 30th September, 1978, duty-paid green tea leaves in bulk wherein 6,000 Kgs. packed in 162 bags were loaded at the tea garden at Bhandiguri Tea Estate on a public carrier for transportation and delivery at Amritsar. The said bags of green tea leaves were seized by the Assistant Collector of Customs, North Bengal Division, Siliguri from public carrier being Truck No. USC 5345 which was reported to be carrying some articles alleged to have been smuggled and contraband in nature. Since the green tea leaves were perishable in nature, the petitioners had drawn the attention of the Assistant Collector of Customs, North Bengal Division at Siliguri and the Officer-in-Charge, Customs, Naxalbari Customs

Preventive Department for the release of the said goods. The said Assistant Collector of Customs ordered provisionally for release of the goods on payment of security deposit of Rs. 10,000/- and on an execution of bond in a proper form to enable the petitioners to take delivery of 162 bags of green tea leaves upon compliance of necessary formalities. The petitioners received a copy of the Charge-sheet dated 27th March, 1979 from the respondent no.4 the Assistant Collector of Customs (Preventive), Indo-Nepal Border at Patna and there to show cause as to why the seized green tea leaves alleged to have been used for concealing the contraband goods should not be confiscated u/s 119 and penalty to be imposed u/s 112/117 on the allegation as if the green tea leaves were used for the purpose of concealing the smuggled goods. The petitioners replied and subsequently they received a copy of an adjudication order bearing No. 38/Cus/80 dated 5th November, 1980 from the Additional Collector of Customs, Muzaffarpur. It is alleged that the notice to show cause dated 27th March, 1979 and the order dated November 5, 1980 so far as confiscation of green tea leaves is concerned are bad in law, unreasonable, perverse and/or made in excess of jurisdiction.

3. Stating all these facts in details, the petitioners have prayed for issuance of a writ of certiorari to quash the show cause notice dated 27th March, 1979 and the order dated 5th of November, 1980 on the ground that the order passed by the respondent no.3 so far as the petitioners are concerned, is not a speaking order and the said respondents" failed to apply their mind which would be corroborated from the fact that the most material factor that there was change of truck after the green tea leaves were loaded in respect of the tea gardens were not at all considered by the said respondents and if the said facts would have been considered by the said respondents, the order might not to have been made as such.

4. The writ petition is contested by the respondents by filing an affidavit-in-opposition sworn by the Assistant Collector of Customs, Naxalbari Division at Siliguri. It is disclosed that acting on an information, the Custom Officers at Naxalbari intercepted a Truck bearing No. USC 5345 near the University Lock gate and upon examination of the documents available with the driver, it appeared that 307 bags of green tea leaves covered under Gate Pass No. 37/78 dated 30.9.78 of Sukna Tea Estate were being transported by the said truck. Upon further examination of the said Truck after unloading the green tea bags, two other bags were found concealed containing smuggled goods such as foreign made synthetic fabrics and binoculars besides currency money. Subsequently, all papers were taken in accordance with law and upon due consideration of the submissions, the goods were confiscated and owner was given an option to redeem the same on payment of specific amount.

5. Mr. Chatterjee, learned Advocate appearing for the petitioners has challenged the orders and according to him the show cause notice and the impugned order are irregular and illegal. Mrs. Sengupta, learned Advocate for the State Respondents has

opposed the writ petition and submitted inter alia that the steps taken by the respondents are lawful and the present writ petition is misconceived.

6. Upon consideration of the materials on record and the submissions made on behalf of the respective parties, this Court is of the view that the Writ Court is not sitting in appeal upon each and every order of the statutory authority. The scope under Article 226 of the Constitution of India has been clearly observed in a recent decision of the Supreme Court reported in [State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others](#). It has clearly been found that the writ Court has to examine the decision-making process. Unless the orders are perverse causing manifest injustice or made beyond jurisdiction or without jurisdiction or in excess of jurisdiction, the Writ Court would be slow to interfere. Admittedly, there is an adjudication after giving proper opportunity to the petitioners. If they are found to be aggrieved, they should have challenged the same in the appropriate forum. Besides, this Court has scrutinised the materials on record and it does not find that the steps taken by the respondents are contrary to and/or inconsistent with the provisions of law. The acts done and/or caused to have been done by the respondents are not mala fide in nature. This Writ Court cannot entertain any disputed question of facts and/or to scrutinise the evidences again. The impugned notice and/or the order do not appear to be irregular and illegal. The allegations made by the petitioners are also found to be unwarranted and uncalled for.

7. Considering with great anxieties, this Court has looked to the materials on record in depth and it does not find any merit in the writ petition.

8. For the foregoing reasons, the writ petition is dismissed. The Rule is discharged. All interim orders are vacated. There will be no order as to costs. This Judgment also covers C.R. No. 503 (W) of 1981 (Sukna Tea Industries Limited and Anr. v. Union of India and Ors. the said Rule is also discharged. All interim orders are vacated. There will be no order as to costs.

There will be stay of operation of this order for a period of a fortnight from date.

Office is directed to supply certified copy of this order immediately if applied for with urgent Court Fee stamp.