

(2010) 07 CAL CK 0081**Calcutta High Court****Case No:** M.A.T. No. 758 of 2010 and C.A. No. 5186 of 2010

Deputy Director, DRI

APPELLANT

Vs

Satya Sarkar

RESPONDENT

Date of Decision: July 8, 2010**Citation:** (2010) 257 ELT 341**Hon'ble Judges:** Kanchan Chakraborty, J; Kalyan Jyoti Sengupta, J**Bench:** Division Bench**Advocate:** Rajarshi Bharadwaj and Subir Kr. Sana, for the Appellant; Shibdas Banerjee, Vipul Kundalia, K. Shah and Aritra Chakrabarty, for the Respondent**Judgement**

@JUDGMENTTAG-ORDER

1. A xerox certified copy of the impugned judgment and order is brought to this Court as the appeal was initially filed with the copy obtained from Server. This certified copy is kept on record.
2. Department is directed to tag this certified copy with the Memorandum of Appeal.
3. Both the application as well as the appeal are taken up together for hearing by consent of the parties since we think that the matter of this nature does not require hearing in a formal manner.
4. By the impugned judgment and order dated 20th May, 2010 the learned trial Judge has directed the respondents to provisionally release the goods on execution of full value bond of the goods and on payment of 25% of the value of the goods in cash as "security". It appears that the learned trial Judge while passing the impugned judgment and order has observed that in identical matters authorities had directed provisional release of the goods on execution of the full value bond of the goods and on payment of 25% of the value of the goods in cash as cash security. The learned trial Judge has recorded that pursuant to the judgment in Narendra Lohia v. Assistant Commissioner of Customs (Prev.) reported in 2009 (238) E.L.T 62

(Cal.) in an identical matter the authorities had complied with the direction and had released the goods on proper security.

5. The learned trial Judge, it appears, following the said decision has passed similar order.

6. Mr. Bharadwaj, learned Counsel appearing on behalf of the appellants while assailing the said impugned judgment and order submits that the writ petitioner was a habitual defaulter and the goods are really imported and it is a doubtful whether it is a prohibited goods or not. Under such circumstances, he submits that instead of bond the writ petitioner/respondent should be asked to furnish bank guarantee of the value of the entire goods. He further contends that the adjudication proceeding is not complete. Hence, the revenue must be secured otherwise the writ petitioner will not be able to pay the duty which will be levied after adjudication is over.

7. As pointed out by Mr. Banerjee, learned Counsel appearing on behalf of the respondent that the said goods were not released for the purpose of investigation and when the investigation is complete with the issuance of the show-cause notice, he submits that the detention of the goods is unnecessary. According to him, the goods ought to have been released unconditionally. However, the learned trial Judge has passed the said order which has been accepted by his client.

8. While deciding the issue we need to examine whether the discretion exercised by the learned trial Judge is arbitrary or not. When we find that learned trial Judge has given reason stating that on identical fact the department has passed several similar orders and learned trial Judge has accepted such orders, we do not think that exercise of this discretion is at all arbitrary.

9. We have checked up the Memorandum of Appeal and not a single word has been spared challenging the aforesaid finding of the learned trial Judge that the department did not pass order of similar nature in past on identical facts and circumstances.

10. Under these circumstances, we think that the judgment and order of the learned trial Judge does not call for any interference. We do not find any substance in the appeal as well as in the application, and both are, accordingly, dismissed.

11. However, before release of the goods in terms of the order of the learned trial Judge, sample as required for the purpose of adjudication may be preserved upon notice to the writ petitioner/respondent.

12. There will, however, be no order as to costs.

13. All points are kept open for adjudication by the appropriate officer since reply to the show-cause is said to have been filed.

14. Urgent xerox certified copy of this order be supplied to the applicants.