

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

**OWP No. 1244/2012 CMA No. 1728/2012
&
OWP No. 1243/2012 CMA No. 1727/2012
OWP No. 1245/2012 CMA No. 1729/2012
OWP No. 1246/2012 CMA No. 1730/2012**

Date of Decision: 31.12.2012

Mohd. Ashraf Dar.	V.	State of J&K & ors.
Ghulam Hassan Dar.	V.	State of J&K & ors.
Mohd. Jabar Dar.	V.	State of J&K & ors.
Shams –ud-din.	V.	State of J&K & ors.

CORAM:

Hon’ble Mr. Justice J. P. SINGH, Judge.

Appearing counsel:

For Petitioner(s)	:	Mr. Rizwan-ul-Zaman, Advocate.
For Respondent(s)	:	Mr. G. S. Thakur, Advocate.

Finished and unfinished Willow Clefts belonging to Shams-ud-Din proprietor of M/s Shah Hamdan Willow Clefts and Cricket Bat, Dogripora Pulwama, loaded in Truck Nos. JK13A/4510, JK13B/4498 and JK03B/9023 belonging to Mohd. Jabar Dar, Mohd. Ashraf Dar and Ghulam Hassan Dar respectively, were intercepted by Deputy Director Forest Protection Force, Jammu, at Sidhra-Jammu.

Finding that the Willow Clefts were being transported for their export out of State, the Deputy Director, Forest Protection Force, Jammu, informed the Divisional Forest Officer, Forest Division Jammu of the seizure of Willow Clefts and Trucks.

The Divisional Forest Officer, Forest Division Jammu, the authorized officer under the *Willow (Prohibition on Export and Movement) Act 2000*, held confiscation proceedings on the seizure report of Deputy Director Forest Protection Force and vide his orders dated 04.04.2012 ordered confiscation of the Trucks along with finished and unfinished Willow Clefts finding that these were being exported out of the Jammu and Kashmir State, an act forbidden under *Willow (Prohibition on Export and Manufacture) Act, 2000*.

Appeals preferred against the orders of the Authorized Officer having been dismissed by the Principal Chief Conservator of Forests, J&K Srinagar, the Appellate Authority, vide its order dated 22.08.2012, the owners of the Willow Clefts and the Trucks, invoked Extra Ordinary Writ Jurisdiction of this Court to question the confiscation orders passed by the Authorized Officer as also the orders passed by the Appellate Authority.

To examine the veracity of pleadings of the petitioners in all these Petitions, this Court vide its order dated November 9, 2012 issued following directions to the Authorized Officer:-

“Divisional Forest Officer (Authorized Officer), Jammu is directed to personally enquire and certify:

(a). As to whether Zahoor Ahmad Dar S/o Gh. Ahmad Dar is running business of manufacturing cricket bats in his factory situated at Hathlimore, Kathua and when he has established the factory at the said place;

(b). In case answer to (a) is in affirmative, then the Divisional Forest Officer (Authorized Officer), Jammu to look into records of said Zahoor Ahmad Dar to find out as to whether in Ledgers/record, which is/are maintained by

him in the course of conducting his business, any transaction in respect of the purchase of semi finished willow clefts is recorded in such books;

(c) The Divisional Forest Officer (Authorized Officer), Jammu to personally inspect the record with reference to the pleadings of the Writ Petition and prepare a memo thereof;

(d) The said Authority to further obtain necessary documents from the Industries Department and concerned authorities;”

In Response to the directions, the Authorized Officer has filed Affidavit concluding as under:-

“CONCLUSION:- From the above quoted details and the perusal of record provided by the different agencies the following conclusions have been drawn.

- a. The unit M/s Gateway Sports Industries, G. T. Road Hatlimore Kathua is duly registered with the District Industries Centre Kathua with Registration No. 0705037009 dated 24.07.1997 in the name of Sh. Zahoor Ahmed Dar S/o Ghulam Ahmed Dar with annual assessment of 108000 Nos of unfinished willow clefts for the manufacture/processing of Cricket Bats, Cane Handles and Cricket Stumps.
- b. The unit holder has neither cooperated nor provided relevant records for the procurement of willow clefts for the year 2011-12 despite repeated attempts by the undersigned. As such, the transaction in respect of purchase of semi finished willow clefts by the M/s Gateway Sports Industries, G. T. Road Hatlimore Kathua for the year 2011-12 could not be ascertained. The unit holder, however, has admitted non availability of records on pretext of being lying with the Chartered Accountant and lawyer for Income Tax purpose.
- c. As mentioned is para (b), above since the unit holder did not provided the required records, the undersigned could not prepare the memo with respect to the writ petitions filed.
- d. (i) From the records provided by the District Industries Centre Kahtua, it is concluded that unit holder had purchased and transported 105000 Nos of unfinished willow clefts from Kashmir Valley to his unit M/s Gateway Sports Industries, G. T. Road Hatlimore Kathua during 2011-12 as per the different permits issued by the competent authority of the District Industries Centre Kathua and subsequently under Divisional Forest Officer, Lidder Forest Division (Bijbihera) order for issuance of Form 25. The receipt of entire consignment of semi/unfinished willow clefts to the tune of 105000 Nos has also been further verified by the District Industries

Centre Kathua in the premises of the unit holder at Kathua.

It can be safely concluded that the semi/unfinished willow clefts to the tune of 13340 Nos seized on 07.02.2012 by the Forest Protection Force and subsequently confiscated by the Authorized Officer (Divisional Forest Officer Jammu) as the prescribed authority under law, were not meant for the M/s Gateway Sports Industries, G. T. Road Hatlimore Kathua. The Unit M/s Gateway Sports Industries, G. T. Road Hatlimore Kathua had already procured 10500 Nos of semi/unfinished willow clefts for the year 2011-12 and addition of the 13340 Nos of seized willow clefts would have crossed the sanctioned annual capacity of 108000 Nos of willow clefts for the unit holder by the District Industries Centre Kathua.

(ii) There is no permit issue by the District Industries Centre Kathua for the procurement of 13340 Nos. seized semi/unfinished willow clefts as it has been proved from the records obtained from the District Industries Centre Kathua.

(iii) Further, the perusal of the Excise and Taxation Officer Commercial Taxes Department Lower Muna, Kashmir letter No:- 349-50/LM/CT dated 07.12.2012 clearly speaks of the facts that the vehicles bearing registration Nos. JK13A/4510 and Jk03B/9023 have not approached his office for clearance of the documents with regard to the goods contained in the vehicles and the stamp appended on the invoice bearing Nos 93 & 95 dated 06.12.2012 is fake which clearly shows that the willow cleft supplier attempted to transport 13340 Nos semi/unfinished willow clefts illegally.

(iv) The seized semi/unfinished willow clefts were loaded and transported in the trucks concealed under apples boxes containing rotten apples giving adequate camouflage to the illegally transported semi/unfinished willow clefts, in an attempt to transport the same out side the State of J&K and said consignment of willow clefts seized and confiscated was not meant for/does not belongs to the M/s Gateway Sports Industries, G. T. Road Hatlimore Kathua.”

The conclusions reached at by the Authorized Officer has brought to fore such facts which were not there before him when he initially passed confiscation orders. The new conclusions reached at, on fresh facts, according to the Authorized Officer, indicate that the petitioners were carrying Finished and unfinished Willow Clefts for their

export out of the State. This conclusion of the Authorized Officer is in essence, ex-parte, on the basis of facts which were already before him and those which were collected by him pursuant to Court directions.

Before taking final decision in the matter as to whether or not the petitioners had any intention to export Finished and unfinished Willow Clefts or they were meant to be carried to M/S Gateway Sports Industries, G.T.Road, Hatli Morh, Kathua, which is stated by the petitioners to have purchased it, the petitioners, M/S Gateway Sports Industries, G.T.Road, Hatli Morh, Kathua, and such other person(s) whose presence may be necessary to arrive at any final conclusion, need to be heard, in that, any conclusion reached at without hearing them may not be permissible because this would amount to violation of the Principles of Natural Justice. This apart, the statutory requirement of Section 26 of the Forest Act, 1987, made applicable to seizures under *Willow (Prohibition on Export and Manufacture) Act 2000* would also require hearing of these persons before attaching finality to the confiscation proceedings particularly when new facts have been collected by the Authorized Officer and there was no effective response thereto by the interested parties who had projected that Willow Clefts were not being exported out of State.

Even otherwise, what comes out from the earlier proceedings pursuant whereto confiscation orders were

issued by the Authorized Officer is that requisite opportunity of hearing does not appear to have been provided to the petitioners as also to M/S Gateway Sports Industries, G.T.Road, Hatli Morh, Kathua to project their view point against confiscation proposal, before issuance of the confiscation orders.

Before ruling on the validity or otherwise of the confiscation proceedings, it need to be ascertained as to whether or not the seized Willow Clefts had to be carried for export out of the State. The issue is both factual as well as legal. The legal aspect of the issue as to whether the petitioners could be said involved in the commission of any offence or was it permissible for them to carry Willow Clefts, can be considered only if it was ascertained on facts, as to whether Willow Clefts had to be carried for export out of the State or for their use in M/S Gateway Sports Industries, Hatli Morh, Kathua, a location within the State.

It may not be permissible for this Court to enter into the arena of determining facts in exercise of its extraordinary writ jurisdiction and in this view of the matter, the legal issues projected by the parties for and against the permissibility of carriage of Willow Clefts, cannot be determined, unless finding on facts as indicated above was returned.

This apart, it is the statutory duty of the Authorized Officer alone to determine the issue both factual and legal

after informing in writing the persons from whom the property was seized and any other person who may appear to have some interest in the seized property, before taking final decision on confiscation or otherwise of the seized property.

In view of the facts and circumstances of the case, when new facts have been brought on records by the Authorized Officer with his conclusions thereon, which cannot be treated to be the final conclusions, for, these were taken without hearing the parties in the matter and affording them requisite opportunity of hearing, And to comply with the provisions of *Section 26(4) of the Forest Act*, the Authorized Officer is required to pass fresh orders on confiscation or otherwise of the seized material after considering the objections, material and evidence that the petitioners, M/S Gateway Sports Industries, Hatli Morh, Kathua or any other person, who may appear to him to have some interest in the seized property, may file or produce before him, notwithstanding the orders passed by the Authorized Officer and the Appellate Authority.

These Petitions are, accordingly, ***disposed of*** with directions to the Authorized Officer to hear the petitioners, M/S Gateway Sports Industries, Hatli Morh, Kathua and any other person whose presence he may consider necessary, on the existing material and on the material that has come to light pursuant to the orders of this Court dated November 9, 2012 and thereafter take fresh decision in the

matter *expeditiously* in terms of *Section 26 of the Forest Act* dealing with all those pleas, material and evidence that the above persons/concern may project before him *uninfluenced* by his earlier orders and the orders of the Appellate Authority,

(J. P. Singh)
Judge

JAMMU:
Sunita
31.12.2012