

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 25th November, 2013

Pronounced on: 20th December, 2013

+ **W.P.(C) 7449/2012**

RAVI CROP SCIENCE

..... Petitioner

Through: Mr. Jagmohan Sabharwal, Senior
Advocate with Ms. Shikha Sapra, Adv.

versus

UOI & ORS

..... Respondents

Through: Mr. S.K. Dubey, Adv. with
Ms. Anandi Mishra, Adv.
Mr. Roshan Lal Goel, Adv.

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G.P. MITTAL, J.

1. By virtue of this writ petition under Article 226 of the Constitution of India, the Petitioner has approached this Court for de-freezing it's account held in Citibank, NA, 27 Central Market, Sector II, Western Avenue Road, Punjabi Bagh, New Delhi which has been frozen by Respondent No.2 (Directorate of Revenue Intelligence).
2. The Petitioner alleges that there were certain allegations of import of high value pesticides/insecticides in the guise of Sodium Bi-Carbonate against certain firms which led to some investigation by Respondent No.2. It is urged that the Petitioner has neither been indicted nor arraigned as a Noticee in the show cause notice purported to have been issued in pursuance of the investigation. In spite of this, the Petitioner's Bank

Account bearing No.030874226 which has undergone major changes (in its Constitution) has been frozen. It is urged that as per the provisions of Sections 110 (1) of the Customs Act, 1962 (the Act), if any goods liable for confiscation under the Act are seized and a show cause notice under Section 124 of the Act is not given within six months, then the goods are liable to be restored to the person from whom the goods have been seized. It is stated that since the Bank account was frozen in July, 2011, the same is liable to be de-frozen.

3. The writ petition has been resisted by Respondents No.1 and 2. Paras 1 to 6 of the counter affidavit which reflects the stand of the Respondents are extracted hereunder:-

“1. That Intelligence developed by Directorate of Revenue Intelligence, Headquarters, New Delhi, indicated that certain firms were importing high value Pesticides/insecticides /Herbicides/Fungicides from China under the guise of ‘Sodium Bicarbonate’, ‘Thionyl Chloride’ and ‘Sodium Bromide’. Therefore live consignments imported by the firms were intercepted and search operations were carried out by the DRI officials. Samples of goods stored in various warehouses and from various live imported consignments were drawn and sent to Central Insecticides Board, Faridabad and Institute of Pesticide Formulation Technology, Gurgaon for conducting of confirmatory tests thereon.

2. That the modus operandi employed by the fraudsters was to mis-declare pesticides / insecticides / herbicides / fungicides as ‘Sodium Bicarbonate’, ‘Thionyl Chloride’ and ‘Sodium Bromide’ and to file Bills of Entry for their clearance at the prevailing import values of ‘Sodium Bicarbonate’, ‘Thionyl Chloride’ and ‘Sodium Bromide’. It is noteworthy that the declared import values of ‘Sodium Bicarbonate’ and ‘Thionyl Chloride’ are in the range of USD 220 – USD 250 per Metric Ton whereas the general import values of pesticides / insecticides / herbicides / fungicides is much higher with the

minimum import values being around USD 2000 per Metric Ton. Hence, the extent of undervaluation resorted to by the said firms has been massive. It is estimated that the actual values of the imported goods is ten times higher than that of the declared values.

3. That statements of the persons involved in such imports and mis-declaration of values and other evidence collected by the DRI so far, reveal that the import of pesticides / insecticides / herbicides / fungicides was being done in the name of several fake front firms by one Mr. Vimal Kumar, proprietor of M/s. V.V.K. Traders, Bhagwan Dass Nagar, East Punjabi Bagh, New Delhi. Goods imported against these fake front firms namely, M/s. Mehta Overseas, M/s. Chopra Overseas and M/s. Umesh Impex and other firms were shown to be sold to individuals against fake cash bills. The imported chemicals with the correct description were shown to be supplied by another set of fake front firms to several firms located mainly at Samba, J&K, controlled by the said Mr. Vimal Kumar through his brother Mr. Kamal Kumar. One such firm namely, M/s Ravi Crop Science, at Samba, was being used by the fraudsters to regularize the illegally imported material/chemicals. The said firm M/s. Ravi Crop Science is a pesticide manufacturing unit.

4. Goods have also been detained / seized at various warehouses belonging to the said importers. As many as seventy to eighty such consignments estimated to be valued at well over `40 crores have been imported by the said perons in the names of the fake front firms till date. At M/s/. Ravi Crop Science, Sambah, J&K, stock including imported insecticides/pesticides of different varieties worth more than `2 crores was detained / seized for further investigation. A rough estimate of the total value of the intercepted/ detained / seized goods is over `5 cores. A modest estimate of the duty evasion on account of mis-declaration and undervaluation (over the past one and a half years) is in excess of ` 4 crore.

5. That fifteen test reports of the samples of seized chemicals have been received till date and they confirm that the goods are pesticides only.

6. Thirteen samples drawn from live containers imported in the name of M/s. Umex Impex, M/s. Chopra Overseas and M/s. Mehta Overseas at ICD, Tughlakabad and Nhava Sheva have been confirmed to contain pesticides, namely Paraquat Disholride, Imidacloprid, Chlorpyriphos, Atrazine, Dichlorvos, Fipronil Buprofezine and Thiamethoxam etc. Correlation of batch number of a herbicide, 'Atrazine Technical' detained at the unit of M/s Ravi Crop Science, Samba with imported goods confirmed that the said goods were mis-declared as 'Sodium Bicarbonate' at the time of import."

4. It has further been stated in the counter affidavit that the import of hazardous and dangerous chemicals is in violation of various laws and poses risk to the health of the persons involved in it's sale and distribution and the same also causes huge amount of loss to the public exchequer.
5. It is stated that during the investigation conducted by Respondent No.2, it was revealed that Mr. Arpit Rajvanshi, former partner of the Petitioner firm M/s. Ravi Crop Science in his statement stated that M/s. Ravi Crop Science had Bank accounts in Punjab National Bank, Muzaffarnagar and Punjab National Bank, Hissar. He further stated that he had returned the cheque book of M/s. Ravi Crop Science to Shri Kamal Alawadi after signing the same. Said Mr. Arpit Rajvanshi also informed that he had no knowledge if M/s. Ravi Crop Science had any account in Citi Bank, New Delhi and that he had not signed any cheque of that account. It is averred that on confronting the account opening form, he (Mr. Arpit Rajvanshi) agreed that his signature appeared on the account opening form as a Partner of the firm. In para 19 of the Counter Affidavit, averments with regard to the proportion of evasion have been made, which is extracted hereunder:-

“19. That during investigation, the answering respondent called for the Account Statement of the Petitioner firm’s bank account in Citibank, New Delhi. The said Account statement revealed huge transactions between M/s. Ravi Crop Science, M/s. VVK Traders, M/s. Classic International and M/s. Galaxy Marketing. An Analysis of the Account Statement also revealed that an amount of `4.09 crores had been received in the said account of M/s. Ravi Crop Science from M/s VVK Traders. Also, an amount of `5.60 Crores, `0.66 Crores and `1.75 Crores (total 8.00 Crores) had been transferred into the Bank Accounts of M/s. Classic International, M/s. Galaxy Marketing and M/s. VVK Traders Pvt. Ltd. Respectively. Investigation by the answering respondent has also revealed that both M/s. Classic International and M/s. Galaxy Marketing were non-existent entities and were floated for the purpose of paper transactions of trade goods. The same has been corroborated by the depositions made by Shri Amit Gupta, R/o C-30 1st Floor, Adarsh Nagar, Delhi, Shri Deepak Bansal Proprietor of M/s. Classic International and Shri Naveen Kumar Gupta, Proprietor of M/s Galaxy Marketing in their depositions made under Section 108 of the Customs Act, 1962. In view of the above, it may be seen that M/s Ravi Crop Science has indulged in transfer of huge amounts to non-existent firms against the purchases of various types of illegally imported pesticides in the name of non-existent firms which were done only on paper, as detailed above. Copy of the said Account Statement from 13.08.2010 to 01.07.2011 is attached herewith as Annexure R-I.”

6. It is stated that the condition of serving a notice to the person from whose possession the goods are seized is applicable to the goods which are seized under Section 110 (1) of the Act only and not otherwise.
7. Mr. Jagmohan Sabharwal, learned Senior counsel for the Petitioner while relying on the judgment of the Hon’ble Supreme Court of India in *Harbans Lal v. Collector of Central Excise & Customs*, (1993) 3 SCC 656 has urged that once a notice under Section 110(2) of the Act is not

given within a period of six months as mandated, the goods seized are liable to be restored to the person from whose possession they were seized. It is urged that even if an extension is given for six months, the same would be invalid unless the person affected is given a notice before giving such extension.

8. On the other hand, Mr. S.K. Dubey, learned counsel for the Respondents tried to make a distinction between Section 110 and 124 of the Act to contend that although the notice under Section 110(2) to be served within a period of six months is mandatory, yet no such time limit is laid down under Section 124 and thus, the seizure of the goods can continue under Section 124 of the Act. In support of his contention, the learned counsel places reliance on *Jeevraj and Ors. v. Collector of Customs & Ors.*, (1997) 8 SCC 519.
9. Mr. Dubey further urges that unconditional de-freezing of the bank accounts may not be allowed as then it might become difficult for the DRI to recover the customs duty and the penalty levied thereon. The learned counsel presses into service a judgment of the Supreme Court in *Commissioner of Customs, New Delhi v. Euroasia Global*, (2009) 6 SCC 58.
10. Mr. Dubey further relies on a Division Bench judgment of this Court in *Director General, DRI & Ors. v. Sajjan Kumar & Ors.*, LPA No.450/2012, decided on 02.07.2012 to urge that the operation of the bank accounts can be permitted subject only to the condition that the Petitioner will not be entitled to withdraw the amounts deposited on the date of the freezing of accounts and the amounts credited in the accounts in relation to the previous imports.

11. The distinction and the scope of Section 110(2) and 124 were dealt with in great detail by the Hon'ble Supreme Court of India in the judgment of *Harbans Lal*. The Supreme Court held that Sections 110 and 124 are independent, distinct and exclusive of each other and even if any seized goods are returnable in terms of Section 110 of the Act, the proceedings for confiscation of the goods under Section 124 may still continue. Paras 7 and 8 of the report in *Harbans Lal* are extracted hereunder:-

7. As said before Section 110 is in Chapter XIII covering the subject of search, seizure and arrest. The section operates during the stage of investigation. Section 124, hinted earlier, is in Chapter XIV which covers the topic: confiscation of goods and imposition of penalties. The subject of investigation and that of confiscations and imposition of penalties are ex facie exclusive of each other, the goal of each being different. A Constitution Bench of this Court in I.J. Rao, Asstt. Collector of Customs v. Bibhuti Bhushan Bagh (1989) 3 SCC 202 while interpreting Section 110(2) proviso of the Act has held that when wanting to extend period beyond six months in respect of seizure of goods, the Collector must serve notice on and afford hearing to the owner of the goods before deciding grant of extension, as his right to restoration of his goods after six months is defeated by the order of extension. It has also viewed that where rights of a person are adversely and prejudicially affected by an order made by an authority in a proceeding, such person is entitled to a predecisional notice irrespective of whether the proceeding is judicial, quasi-judicial or administrative in nature. Earlier in point of time in Asstt. Collector of Customs v. Charan Das Malhotra (1971) 1 SCC 697 this Court observed that the Collector was not expected to propose the extension mechanically or as a matter of routine but only on being satisfied that facts exist which indicate that the investigation could not be completed for bona fide reasons within the time provided in Section 110(2) and that, therefore, extension of the period has become necessary. The Court also emphasised that the Collector cannot extend the time unless he is satisfied on facts placed before him that there is sufficient cause necessitating extension, in which case the burden of proof would clearly lie on the Customs authorities applying for extension to show that such extension was

necessary. It was also pointed out that on the expiry of the period of six months, from the date of seizure, the owner of the goods would be entitled as of right to restoration of the seized goods, and that right could not be defeated without notice to him that an extension was proposed. It is found that the point was considered again in Lokenath Tolaram v. B.N. Rangwani (1974) 3 SCC 575 but this case has been concluded on different considerations. Unquestionably thus is the settled position of law that while extending time under Section 110(2), the owner of the seized goods is entitled to notice, because the seized goods on the expiry of period of six months are required to be returned to him, and if that period was to be extended for another period of six months he had the right to be heard. The High Court in the decision under appeal has thus rightly observed that it was not disputed before it that the ex parte order extending the time by another six months as postulated in Sections 110(2) and 124 of the Act, was vitiated.

8. Then comes the question as to what is the fallout of the order extending time under sub-section (2) of Section 110 of the Act being vitiated. Learned counsel for the appellant would have us hold that in face of that vitiation, proceedings under Section 124 get lapsed for they could not be initiated without the aid of Section 110. This argument, however, militates against the ratio of Charan Das Malhotra's case and cannot be accepted. In the second half of paragraph 5 of the report of that case this Court observed:-

“Section 124 provides that no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty. The section does not lay down any period within which the notice required by it has to be given. The period laid down in Section 110(2) affects only the seizure of the goods and not the validity of the notice.”

(emphasis supplied)

In clear terms, it has thus been held that the period angle causing affectation under Section 110(2), would only pertain to the seizure of goods. The validity of notice under Section 124, for which no

period has been laid within which it is required to be given is not affected. The seizure may have, after the expiry of six months or after the expiry of extended period of six months entitled the owner or the person concerned to the possession of the seized goods. This obviously is so because the matter at that stage is under investigation. On launching proceedings under Chapter XIV, Section 124 enjoins issuance of a notice for which no period has been fixed within which notice may be given. The difference is obvious because this goes as a step towards trial. The ratio of this Court aforequoted in Charan Das Malhotra's case thus settles the question aforeposed and the answer is that these two Sections 110 and 124 are independent, distinct and exclusive of each other, resulting in the survival of the proceedings under Section 124, even though the seized goods might have to be returned, or stand returned, in terms of Section 110 of the Act, after the expiry of the permissible period of seizure."

12. Thus, it is well settled by the authoritative pronouncement of the Supreme Court in *Harbans Lal* that if the notice as required under Section 110(2) of the Act is not served, the goods are liable to be returned, though the same may not affect the proceedings for confiscation of the goods under Section 124 of the Act.
13. *Jeevraj and Ors.*, relied upon by the learned counsel for the Respondents in fact reiterates what was laid down in *Harbans Lal*. It nowhere states that even if no notice under Section 110 (2) in respect of the seizure of the goods is given, the goods can be still continued to be seized for the purpose of confiscation under Section 124 of the Act.
14. Mr. S.K.Dubey, learned counsel for the Respondents has tried to persuade me that the seizure of the bank account in the instant case was not covered under Section 110(2) of the Act, rather the same was done under Section 110 (3) of the Act and there is no provision to serve any notice

upon the person from whose possession any documents or things are seized under this Section.

15. Mr. S.K. Dubey urges that the investigation in respect of evasion of customs duty is in progress and show cause notices are likely to be issued to the persons guilty of violation very soon. It is urged that freezing of the bank account was primarily to ensure the recovery of the customs duty, which was evaded on account of mis-declaration of the goods.
16. Section 110(3) of the Act deals with seizure of the documents or things which in the opinion of the proper officer would be relevant to any proceedings under the Act. Freezing of the bank account, in my opinion, will not be seizure of any document or thing useful or relevant to any proceedings under the Act. Rather freezing of the account was only with a view to stop the Petitioner from withdrawing the proceeds of the alleged violations under the Act.
17. In *Euroasia Global*, relied upon by the learned counsel for the Respondents, it was held that the 'goods' defined under Section 2(22) of the Act includes currency. There is no precedent to show that freezing of the bank account will amount to seizure of currency. Since the Respondents' plea is that the bank account stand frozen with a view to recover the evaded customs duty, penalty, *etc. etc.*, the freezing of the bank account may not amount to the seizure of any document, but at the same time it cannot also amount to seizure of any goods liable for confiscation as well. In *Euroasia Global*, even in case of seizure of the currency, the Supreme Court held that unconditional release of cash ought not to have been allowed. In para 8, the Supreme Court held as under:-

“8. However, looking into the facts of the present case, we are of the view prima facie that before adjudication, in exercise of writ jurisdiction on the facts of this case, the High Court ought not to have granted unconditional release of the cash. In fact, we called upon the learned counsel for the respondent to give a bank guarantee. The respondent is not in a position to give a bank guarantee for the amount which he had already withdrawn.”

18. Similarly, in *Sajjan Kumar*, the bank accounts were permitted to be operated, subject to the direction that the amount received in respect of past export transactions shall not be withdrawn.
19. The instant case relates to import of certain chemicals and evasion of customs duty thereon.
20. The Respondents in the counter affidavit have stated the chain as to how the misdeclared goods were imported by M/s. VVK Traders, M/s. Mehta Overseas, M/s. Chopra Overseas and M/s. Umesh Impex and other firms and were shown to be sold to individuals against the fake cash bills and imported chemicals with correct description were shown to be supplied by another set of fake front firms to several firms located mainly at Sambha, Jammu & Kashmir and the Petitioner's firm was found to be one of such firms.
21. In this view of the matter, since the freezing of the bank account, as stated above, was not seizure of the 'goods' as envisaged under Section 110 of the Act, the Petitioner is not entitled to de-freezing of the bank account unconditionally. It is therefore, directed that the amount deposited in Bank Account No.030874226, Citibank, NA, 27 Central Market, Sector II, Western Avenue Road, Punjabi Bagh, New Delhi, after the date of freezing the account shall be released, subject to furnishing of a Bank

guarantee to Respondent No.2 in respect of the amount credited in the account from the date of freezing of the account.

22. The writ petition stands disposed of accordingly.

(G.P. MITTAL)
JUDGE

DECEMBER 20, 2013

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