

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

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Date of decision: 23rd April, 2015

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LPA 136/2014

M/S RAVI CROP SCIENCE

..... Appellant

Through: Mr. H.G.R. Khattar, Adv.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Akshay Makhija, CGSC with Mr. Roshan Lal Goel & Mr. Rohitendra Deb, Advs. for R-1/UOI.
Mr. S.K. Dubey with MS. Sushma Yadav & Mr. Vikram Singh, Advs. for R-2/DRI.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra-court appeal impugns the judgment dated 20th December, 2013 of the learned Single Judge of this Court in W.P.(C) no.7449/2012 filed by the appellant to the extent the same, while directing the release of the amount deposited in the bank account of the appellant with the respondent no.3 Citibank after the date the same was frozen at the instance of the respondent no.2 Addl. Director General, Directorate of Revenue Intelligence (DRI), makes the same subject to the appellant furnishing a bank guarantee to the respondent

no.2 DRI in respect of the amount credited in the account from the date of the freezing of the account.

2. The appeal came up for admission on 18th March, 2014 when the counsels for the respondents appeared on advance notice. The tenor of the order sheet thereafter shows that though no formal notice of the appeal was issued but the counsels were heard finally on the appeal from time to time. Vide order dated 7th July, 2014 the writ record was also requisitioned.

3. The appellant filed the writ petition from which this appeal arises pleading:-

- (i) that the account of the appellant with the Punjabi Bagh Branch of the respondent no.3 Citibank was frozen at the instance of the respondent no.2 DRI in July, 2011;
- (ii) the aforesaid account was frozen in the follow up of an investigation initiated by the respondent no.2 DRI against few companies who were importing high value Pesticides/Insecticides in the guise of Sodium Bi-Carbonate; however even on culmination of investigation, the appellant had neither been

indicted nor arraigned as a noticee in the show cause notice issued in relation to the said matter;

- (iii) the order of freezing of the bank account was passed without any notice to the appellant;
- (iv) that though the appellant firm is also engaged in manufacture of different types of Pesticides, Herbicides etc. but has undergone major changes and erstwhile partners have since resigned and new partners have acquired the appellant firm w.e.f. 1st April, 2012;
- (v) that Section 110(1) of the Customs Act, 1962 provides for seizure of goods, documents, sale proceeds etc. on reasonable belief that the same are offending the provisions of the Act but Section 110(2) mandates that if a show cause notice under Section 124 has not been issued in respect of the said seizure, the person from whose possession the seizure was effected, shall be entitled to the release of the seized material;
- (vi) that the arbitrary freezing of the bank account has put the appellant's business to a halt;

(vii) that the Customs Authorities have not issued any show cause notice under Section 124 in respect of the account; and,

(viii) that the appellant has no liability under the Customs Act.

4. The respondent no.2 DRI filed a counter affidavit to the writ petition, pleading:-

(a) that the intelligence developed by DRI indicated that certain firms were importing high value pesticides / Insecticides / Herbicides / Fungicides from China under the guise of Sodium Bi-carbonate, Thionyl Chloride and Sodium Bromide and thereby evading higher customs duty;

(b) that live consignments imported by the firms were intercepted and search operations were carried out and samples of goods stored in various warehouses were drawn and sent to Central Insecticides Board, Faridabad and Institute of Pesticide Formulation Technology, Gurgaon;

(c) that the extent of undervaluation resorted to by the said firms was massive;

- (d) that investigations revealed that such import 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 etc. 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 controlled by said Mr. Vimal Kumar through his brother Mr. Kamal Kumar; one such firm namely the appellant was being used by the fraudsters to regularize the illegally imported material / chemicals;
- (e) at the premises of the appellant, stock including imported Insecticides/Pesticides of different varieties worth more than Rs.2 crores was detained/seized for further investigation;
- (f) modest estimate of the duty evasion on account of misdeclaration and undervaluation was in excess of Rs.4 crore;
- (g) that the test reports confirmed that the goods were Pesticides;

- (h) correlation of batch number of the goods detained at the unit of the appellant with imported goods confirmed that the said goods were mis-declared as Sodium Bi-carbonate at the time of import;
- (i) that the mis-declared and undervalued imported goods are liable for confiscation under Section 111(d), (f) and (m) of the Customs Act, 1962;
- (j) that the importers and other persons involved are liable for penal action under Section 112 of the Customs Act;
- (k) on 10th August, 2011, statement of one Mr. Arpit Rajvanshi a former partner of the appellant firm was recorded under Section 108 and particulars of bank accounts of the appellant learnt;
- (l) on 27th August, 2012 statement of Shri Om Prakash another partner of the appellant firm was recorded under Section 108 of the Customs Act, who disclosed that besides him Shri Inderjit was the only other partner of the appellant and that the firm had been purchased from Mr. Arpit Rajvanshi;

- (m) on 16th November, 2011, statement of one Mr. Subodh Kumar, authorized signatory of the appellant qua the Citibank account, was recorded under Section 108 of the Customs Act;
- (n) that investigation into the transaction in the Citibank account of the appellant firm revealed huge transactions between the appellant and V.V.K. Traders, M/s Classic International and M/s Galaxy Marketing; it also showed that an amount of Rs.4.09 crores had been received in the said account from V.V.K. Traders, an amount of Rs.5.60 crores, Rs.0.66 crores and Rs.1.75 crores had been transferred into the bank accounts of M/s Classic International, M/s Galaxy Marketing and M/s V.V.K. Traders;
- (o) the investigations further revealed that M/s Classic International and M/s Galaxy Marketing were non-existent entities;
- (p) all this showed that the appellant had indulged in transfer of huge amounts to non-existent firms against the purchase of various types of illegally imported Pesticides in the name of non-existent firms;

- (q) it appeared that the Citibank account at Delhi was opened only to facilitate easy transfer of money to non-existent firms and for which reason only a person with whom the appellant firm had no relationship was made the signatory thereof;
- (r) that the said bank account had been frozen under Section 110(3) of the Customs Act; and,
- (s) that the investigations into the matter had not culminated till then.

5. The appellant filed a rejoinder to the aforesaid counter affidavit but need is not felt to refer thereto as no reference thereto was made during the hearing.

6. The learned Single Judge, vide the impugned judgment found / observed / held:-

- I. that it was the contention of the appellant, relying on *Harbans Lal Vs. Collector of Central Excise & Customs* (1993) 3 SCC 656 that since no notice under Section 110(2) had been given within a period of six months, the goods seized were liable to be restored to the person from whose possession they had been seized;
- II. per contra, it was the contention of the respondent no.2 DRI that though Section 110(2) provides for a notice to be served within six

months but there is no such requirement under Section 124 of the Act and the seizure can continue under Section 124; reliance in this regard was placed on *Jeevraj Vs. Collector of Customs* (1997) 8 SCC 519;

III. that it was also the contention of the respondent no.2 DRI that if unconditional de-freezing of the bank account was allowed, it would become difficult for the DRI to recover the customs duty and penalty which may fall due; reliance in this regard was placed on *Commissioner of Customs, New Delhi Vs. Euroasia Global* (2009) 6 SCC 58;

IV. that the Supreme Court in *Harbans Lal* supra has held that liability to release the seized goods upon non-service of notice under Section 110(2) within six months does not affect the proceedings for confiscation of the goods under Section 124 of the Act;

V. it was also the contention of the counsel for the respondent no.2 DRI that the seizure in the instant case was not under Section 110(2) but under Section 110(3) of the Act whereunder there is no

requirement for issuance of notice within six months and that investigations were in progress and show cause notices were likely to be issued soon and that freezing of the account was only to ensure recovery of customs duty which was evaded by mis-declaration of goods;

- VI. however Section 110(3) dealt with seizure of documents or things and would not cover freezing of bank account; freezing of bank account was also not the same as seizure of currency; and,
- VII. that since the freezing of the bank account was not seizure of goods as envisaged under Section 110, the appellant was not entitled to de-freezing of the bank account unconditionally.

Accordingly, it was directed that the amount deposited in the bank account, after the date of freezing the account be released subject to furnishing of a bank guarantee in respect of the amount credited in the account from the date of freezing of the account.

- 7. The counsel for the appellant before us argued, (i) that the appellant did not import anything and thus the Customs Act does not apply to it; (ii) that till then even, no notice whatsoever had been served on the appellant; and, (iii) that

thus the condition imposed on the appellant of furnishing a bank guarantee for de-freezing of the account was improper.

8. Per contra the counsel for the respondent no.2 DRI argued, (i) that a show cause notice dated 29th November, 2013 had already been issued and adjudication was pending – a copy of the said show cause notice was handed over in the Court; and, (ii) that the appellant is not co-operating in the said proceedings.

9. The counsel for the appellant in rejoinder argued, (i) that the appellant had been granted bail by the Supreme Court and it had further been ordered that proceedings be held in the presence of the Advocate for the appellant; (ii) that the offences under the Customs Act are bailable; (iii) nothing against the appellant was found in the search seizure; (iv) that the notice of freezing the account is without any particulars; and, (v) copies of some bills, ledger and accounts was handed over to show that all the transactions of the appellant are above board and tax paid.

10. The appellant neither along with the writ petition nor along with the appeal has filed the order or direction or notice freezing the bank account of the appellant. All that the appellant filed along with the writ petition was a copy of

a letter dated 4th August, 2012 written by it to the respondent no.2 DRI for release of the money in the frozen account, on the ground that the partners in the firm had changed and a copy of the judgment of the Bombay High Court in ***Veritas Exports Vs. Union of India*** 2005 (184) ELT 341 Bombay.

11. The counsels, during the hearing referred to Sections 110(1), (2) & (3) of the Customs Act and which are as under:-

“110. Seizure of goods, documents and things. – (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Principal Commissioner of Customs or Commissioner of Customs for a period not exceeding six months.

(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act. ”

12. The hearing before us revolved around whether such freezing of bank account is confiscation/seizure of goods. We had during the hearing raised several queries and are constrained to observe that neither are there any proper pleadings from either side nor was proper assistance forthcoming. However the counsels at the time of close of the hearing handed over copies of numerous judgments, without showing the application thereof to the controversy. The counsel for the appellant has handed over copies of, (i) ***I. J. Rao, Asstt. Collector of Customs Vs. Bibhuti Bhushan Bagh*** (1989) 3 SCC 202; (ii) ***Assistant Collector of Customs Vs. Charan Das Malhotra*** 1971 (1) SCC 697, (iii) ***BHP (India) P. Ltd. Vs. Dy. Dir., Directorate of Revenue Intelligence*** 1999 (113) ELT 383 (Cal.); (iv) ***Veritas Exports Vs. Union of India*** 2005 (184) ELT 341 (Bom.); (v) ***Vikas Gumber Vs. Union of India*** 2008 [3] JCC 2004; (vi) ***Motilal Lalchand Shah Vs. L.M. Kaul*** AIR 1972 Gujarat 115 (V 59 C 19); (vii) ***Mohan Shet Vs. Commissioner of Customs (Prev.), Mumbai*** 2001 (129) ELT 358 (Tri. - Mum.); (viii) ***Hansraj Baid Vs. Collector of Customs (Prev.), W.B., Calcutta*** 2000 (123) ELT 531 (Tribunal); and, (ix) ***Laxman Overseas Vs. Union of India*** 167 (2010) DLT 302 and the counsel for the respondent no.2 DRI has handed over copies of, (i) ***Black's Law Dictionary VIth Edition***; (ii) ***Words and Phrases IVth Edition***; (iii) ***AM Overseas Vs.***

Union of India 2006 (194) ELT 267; (iv) *Rohit Kumar Vs. Union of India* 2002 (141) ELT 27; (v) *Union of India Vs. A.M. Overseas* (2006) 6 SCC 19; (vi) *M.K. International, Ludhiana Vs. Union of India* 2006 Indlaw PNH 2003; (vii) *Commissioner of Customs, New Delhi Vs. Euroasia Global* (2009) 6 SCC 58; (viii) LPA No.450/2012 titled as *Director General, Directorate of Revenue Intelligence Vs. Sajjan Kumar*; (ix) *Harbans Lal Vs. Collector of Central Excise and Customs, Chandigarh* (1993) 3 SCC 656; and, (x) *Jeevraj Vs. Collector of Customs* (1997) 8 SCC 519.

13. In so far as we could understand, the case of the respondent no.2 DRI against the appellant is that the appellant firm facilitated sale of goods imported by mis-declaration and evasion of stamp duty.

14. Section 111 of the Act, to which a reference is found in the counter affidavit of the respondent no.2 DRI, entitles the DRI to confiscate improperly imported goods. The respondent no.2 DRI, under the said provision, could have seized the said goods from the custody of appellant also. However the present is not a case of seizure of improperly imported goods. So far as we could understand, the present is a case of seizure of the sale proceeds of the purportedly improperly imported goods. A provision therefor was found by us

in Section 121 of the Act and to which attention of the counsels was drawn during the hearing and which is as under:-

“121. Confiscation of sale-proceeds of smuggled goods. – Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods, the sale-proceeds thereof shall be liable to confiscation.

15. We had enquired from the counsels that since a express provision for confiscation of sale proceeds of smuggled goods exists, whether it could be said that the same was a seizure under Section 110.

16. We could not get any answer.

17. We, without even the order / notice / direction of freezing of the account and without proper pleadings, and merely on the basis of copies of some documents handed over across the bar, do not deem it appropriate to render any interpretation of Sections 110 and 121 of the Act. Suffice it is to state that from the show cause notice dated 29th November, 2013 issued by the respondent no.2 DRI to the appellant, a case of the monies in the frozen account being sale proceeds of smuggled goods is made out and the said monies are liable to confiscation under Section 121 supra and thus cannot be allowed to be withdrawn unconditionally by the appellant.

18. We may note, that the appellant has failed to explain the source of the imported goods sale proceeds whereof were credited into the bank account which has been frozen. The onus was/is on the appellant to explain the transactions in the said bank account and to establish that the said transactions were/are not tainted. No endeavour even in that direction has been made. We, at this stage, have thus but to presume that the monies in the bank account which has been frozen, are sale proceeds of smuggled goods.

19. Once that is found to be the case, the appellant in any case is not entitled to any discretionary relief under Article 226 of the Constitution of India.

20. As far as the argument of the appellant, of the constitution of the appellant firm having since changed, and on which main reliance was placed, is concerned, we may only observe that mere change in partners will not entitle the appellant firm to the monies in the bank account, if the same were otherwise liable to be confiscated.

21. We, in this view of the matter, do not feel the need to refer to the plethora of judgments aforesaid.

22. We therefore dismiss this appeal, leaving the parties to bear their own costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

APRIL 23, 2015

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