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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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+ W.P.(C) 7088/2014

SECURITRANS INDIA PVT. LTD ..... Petitioner
Through: Mr. P.S. Sharda with Mr. Kshitij Sharda, Advocates.

versus

UNION OF INDIA & ORS .... Respondents
Through: Mr. Amit Mahajan, Advocate for R-1.
Mr. Rahul Chaudhary, Senior Standing counsel for R-2 to R-6.
Mr. Sharique Hussain, Advocate for R-7/HDFC Bank Ltd.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **17.05.2016**

Dr.S. Muralidhar,J.:

1. The Petitioner, Securitrans India Pvt. Ltd. ('SIPL'), has filed this writ petition against the Income Tax Department ('hereinafter referred to as 'the Department') [Respondent Nos. 2 to 6] seeking various reliefs including the release of a sum of Rs. 60,48,672 which was seized while transporting cash from the customers of HDFC Bank [Respondent No. 7] to its Gandhi Nagar Branch at Ghaziabad.

Background facts

2. The background to the petition is that the Petitioner-SIPL is engaged in the business of transporting cash on behalf of the banks in its armoured vehicles including cash collections from customers of the various banks. In

the instant case, SIPL carries out the service of collection and safe delivery of money physically from the customers of Respondent No. 7/HDFC Bank strictly in accordance with the terms of a written agreement entered into between SIPL and HDFC Bank. The Petitioner states that it is also a registered service provider and pays service tax. It is stated that under the Finance Policy of the Government of India, the business carried by the Petitioner is legitimate and within the scope of license granted by the Reserve Bank of India ('RBI') to HDFC Bank. It is asserted that the Petitioner was performing the services of collection and transportation of cash under the direct authorization and on behalf of the HDFC Bank in terms of the agreement with HDFC Bank. A copy of the said agreement dated 23rd August 2014 has been placed on record.

3. The agreement spells out the obligations of the Petitioner. The Petitioner is obliged thereunder to have sufficient security practices, control processes and checks in respect of cash pick up/delivery services 'rendered and handled/executed at its premises or in the bank's premises or at customer's premises or while the cash is in transit on a regular basis." HDFC Bank has the right to immediately notify the RBI in the event of any breach of security and leakage of confidential customer information/data/records. In these eventualities, HDFC is liable to its customers for any damages and SIPL shall indemnify HDFC for such losses or damages.

4. There are also clauses regarding confidentiality or authority of the information that may be provided to SIPL for the purpose of discharging its contractual obligations. Schedule-I to the Agreement sets out the scope of the services. The obligation of SIPL is "to pick up, collect, obtain, currency notes from the bank's customers/clients and any other related

documents etc. and deposit the same with the bank." The other obligations as spelt out in Schedule I include "to deliver, hand over, pay, issue cash, currency notes to the customers/clients of the bank in accordance with the instructions that may be given by the bank from time to time and also collect related documents/cheques from the customers and submit to the bank"; "to obtain the signatures, receipts, acknowledgements, etc. and/or any other documents/papers from the customers of the bank and deliver/hand over or forward the same to the bank from time to time in accordance with the instructions of the bank"; "to account, be responsible for cash, currency notes from the bank from time to time"; "to furnish, generate prepare such reports containing such details as may be specified by the bank from time to time;" and "any other services incidental or related to the aforesaid services."

5. Schedule II to the Agreement sets out the "Modalities and procedures to be followed by the company which form part of this agreement." This included the instructions issued by HDFC Bank at the central processing units for the cash pick up/deliveries at the nominated Bank Manager/Officer at any other centres by the local HDFC Bank head or any other office of the bank, as specified and instructed by the Bank to the Petitioner from time to time. The instructions given by HDFC Bank would be given in a format designed by the bank. There are standard formats by the bank for (a) Instructions for Delivery, (b) Instructions for pick up (c) Client advice for non-execution of instructions and (d) Client deposit slip book. There are detailed instructions about the cash deposit challan which is to be in quadruplicate and with a unique serial number printed on all the four copies. All the copies are to be signed by the customer/depositor as well as employee of the cash agency. The first copy would be issued to the

customer at the time of pick up by the agency, the second, third and fourth copies are submitted to the teller at the bank along with the cash collected from the customers. All the three copies are to be signed by the teller in token of having received the cash.

6. *Inter alia* Clause 5 of Schedule II states as under:

> "5. The Company shall be responsible for any amount handed over by the Bank to the Company but not properly received by the customer of the Bank, and handed over by the customer of the Bank to the Company but not properly received by the Bank. The Company shall be liable to make good the same to the Bank. For the purpose of this agreement, only those amounts shall be considered as delivered, which are so accepted by the Bank. Such acceptance by the bank shall be at the sole discretion of the Bank."

7. Clauses 23 to 25 of the Schedule II which are relevant for the present case, read as under:

> "23. The cash will be carried in sealed envelopes or canvas bags with tamper proof seal or steel trunks duly locked (steal trunks in case the cash collected is huge and bulk). The cash deposit challan will also be sealed with the cash to prevent any chance of tampering or alterations.
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> 24. All moneys picked up will be carried to the designated branch of the bank for deposit over the counter. The receiving branch will accept, examine and count the cash and if in order will acknowledge the cash deposit on the third and fourth copies of the cash deposit challans.
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> 25. The amount carried by the bank either from the customer to the bank or bank to the customer cannot exceed Rs. 4 crore per trip. Cash that can be transported per van shall be limited to Rs. 4.00 crore."

8. Schedule III to the Agreement sets out the consideration to be paid for the services rendered. SIPL also simultaneously furnished an Indemnity

Bond in favour of HDFC Bank agreeing to make good the loss or damages caused to the Bank. An Addendum to the Agreement sets out the precise guidelines for cash pick-up and delivery services.

9. On 9th January 2012, a date when the polling in the elections to the Uttar Pradesh Legislative Assembly was in progress, one of the armoured vehicles of SIPL bearing No. DL-1LK 7917 was on its way to the Ghaziabad branch HDFC Bank having collected cash from some of its customers. SIPL has placed on record the document titled 'Cash Pickup Route Ghaziabad – II Date: 9.01.2012" which indicates the names of the clients of HDFC Bank. This lists out 18 customers of HDFC Bank, Gandhi Nagar Branch, Ghaziabad. SIPL has also placed on record the duty roster of 9th January 2012. Pursuant to the orders passed by this Court on two occasions, i.e., 3rd February 2016 and 15th March 2016, SIPL has also furnished the names of the following persons accompanying its aforementioned armoured vehicle:

(1) Sushil Kumar s/o Ram Niwas Mishra, SID No. 1152, Cash in Transit Custodian;

(2) Praveen Kumar s/o Ram Niwas Singh, SID No. 1685, Cash in Transit Custodian;

(3) Pawan Kumar s/o Vijay Pal Singh, SID No. 1681, Driver

(4) Ratan Singh s/o Dafe Darr Singh, SID NO. 1214, Gunman

(5) Jain Prakash s/o Kalicharan, SID No. 1184, Gunman

10. There are also certain supporting documents produced to show that the aforementioned personnel were properly assigned duties on that particular

day.

11. The aforesaid armoured vehicle was intercepted by the Flying Squad Magistrate, Ghaziabad, Mr. Y.P.S. Yadav and his team, according to the information received from the Commanding Officer, Indirapuram, Ghaziabad on 9th January 2012. It was found carrying the cash to the extent of Rs. 60,48,672. According to SIPL, the Gunman, Driver and Custodian accompanying the armoured vehicle apprised the police personnel that the vehicle was on duty for HDFC Bank. They were also apprised that the pay slips, vouchers and instructions were inside the sealed bags for safety and placed in the sealed containers. SIPL states that the police authorities then took the vehicle and sealed cash containers into custody and the vehicle was then taken to the police station, Link Road, Sahibabad.

12. Mr. R.K. Seth, Deputy Branch Manager of SIPL then reached the police station in response to a call from the Flying Squad Magistrate requiring a responsible official of SIPL to report to him. The statement of Mr. R.K. Seth was recorded by the Joint Director of Income Tax ('JDIT'), CGO Complex, Hapur, Ghaziabad. A copy of the said statement of Mr. Seth has been placed on record.

13. According to the Department, Mr. Seth confirmed that there was an agreement with the HDFC Bank. When asked why there was no logo on the vehicle, Mr. Seth pointed out that the vehicle was recently painted. When asked "to give the name and address of the private parties whose cash that has been transporting", Mr. Seth suggested some of the parties' names, i.e., "ITC (P) Limited, Mahindra M.G., Bharti Retail, M.S. Sport Limited, Trent Ltd. etc." When asked "do you have any evidence of parties, whose cash you are carrying is disclosed or accounted as per

provisions of Income Tax Act, 1961", Mr. Seth is supposed to have replied "No Sir, I have no evidence for this cash." When asked "apart from above, you have to say anything" Mr. Seth replied:

> "HDFC bank has given the facility to its customers that their cash collected by us should be deposited daily in their accounts. We have collected the cash is to be deposited in HDFC Branch, Gandhi Nagar, Ghaziabad."

Stand of the Department

14. From the counter affidavit filed in this Court by Mr. Sanjeev Kumar Yadav, JDIT (Investigation), Meerut the inference drawn by the Department from the above information provided by Mr. Seth was that SIPL was engaged in the business of carrying cash for HDFC, ICICI, KBL and other banks for loading their ATMs at various places. SIPL also collected the money from their customers and deposited it as per the direction of the concerned bank. Mr Yadav states that Mr. Seth had no documentary evidence which could justify that the said cash was actually accounted for and disclosed for income tax purposes 'at that moment.'

15. The affidavit of Mr. Yadav also acknowledges that subsequent to the above statement, SIPL did produce a copy of the agreement entered into between it and the HDFC Bank. Mr. Yadav also acknowledges the modalities and procedures to be followed by SIPL which form part of the agreement. He then states: "Mr. R.K. Seth who was carrying the cash of Rs. 60,48,672 but the Assessee Shri R.K. Seth was not having any challan receipts/evidence of the cash." Mr. Yadav in his affidavit has also asserted that "there was no documentary evidence regarding issue of cash from these parties to SIPL except certain self-generated receipts, even these were wrongly filled up with numerous discrepancies as have been recorded in the statement."

16. The above statements of Mr Yadav do not appear to be correct. It transpires that Mr. Seth had not accompanied the armoured vehicle at all. The names of the persons who accompanied the armoured vehicle have already been noticed hereinbefore. Therefore, it is not correct to state that Mr. Seth was carrying the cash. Secondly, it transpires that Mr. Seth had reached the police station subsequent to the seizure of the armoured vehicle and his statement was thereafter recorded. Thirdly, the statement that Mr. Seth himself did not have any challan/receipt or evidence relating to the cash, appears again to be misleading one. From the file produced before this Court by the Department, it is apparent that when the sealed containers were opened, it contained challans. Photocopies of the challans so found are to be found in the Department's file.

17. There are certain features of these challans which require to be noticed. The first is that they are sequentially numbered as 479801 to 479810 and 479501 to 479507. The challans dated 9th January 2012 contain the names of the customers, the amount of cash collected and the account no. of the customer with the HDFC Bank. They also contain columns which show the number of currency notes and denominations and which tallies with the total amount mentioned in each challan. The Court notes that there was sufficient information available in the challans for the Department to know who the customers were and what their account numbers with the HDFC Bank were. Therefore, it is incorrect on the part of Mr Yadav to say that there was no evidence in the forms of challans or receipts. The information contained in the slips cold have been easily verified by the Department.

18. In response to a pointed query to Mr. Rahul Chaudhary, learned Senior standing counsel for the Department whether the Assessing Officer ('AO')

to whom the case was transferred made enquiries with the HDFC Bank or with the customers whose names were found in the slips, the answer was in the negative.

Further events

19. To continue the narration of what transpired thereafter, after the statement of Mr. Seth was recorded on 9th January 2012, the seized containers were opened on 10th January 2012 in the premises of State Bank of India ('SBI') at Navyug Market, Ghaziabad. According to SIPL, despite the sealed containers disclosing the aforementioned details the police took the vehicle and handed over the money to the JCIT who produced authorization under Section 132A of the Act from Respondent No. 3 (Commissioner of Income Tax). In terms of the agreement with HDFC Bank, the Petitioner's account was on 14th January 2012 debited for the sum of Rs. 60,48,672.. The said amount was credited to the accounts of the respective customers of HDFC Bank.

20. On 8th February 2012 SIPL filed an application with the Department under Section 132B of the Act seeking release of the money. SIPL offered to furnish voluminous documentary evidence in support of its prayer. SIPL states that thereafter it "ran from pillar to post seeking the return of the said money" but did not succeed. A further application was filed on 1st October 2013 which again did not result in any response from the Department.

21. On 15th October 2013 the Central Board of Direct Taxes ('CBDT') informed SIPL that it should make an application before the AO of Mr. Seth under Section 132A of the Act for release a sum of Rs. 60,48,672. SIPL made an application on 30th September 2013 and in response thereto, it received a reply on 23rd October 2013 from the Income Tax Officer

(Inv.)(Tech) on behalf of the Director of Income Tax (Inv.), Kanpur that

> "the appraisal report in the case of M/s. Securitrans India Pvt. Limited along with other necessary documents have been transferred to your Assessing Officer, i.e., Company Circle-8(1), Delhi on 17th August 2013. You are, therefore, requested to please contact your Assessing Officer for any further action in this regard."

22. By another letter dated 28th October 2013 the DCIT, Circle-8(1), New Delhi informed SIPL that since search and seizure action was conducted on the employee of SIPL, i.e., Mr. R.K. Seth, R/o X-41, Sector-12, Noida on 9th January 2012 the matter had been referred back to the DCIT (Inv)-II, Ghaziabad.

23. SIPL then addressed a representation to the CBDT on 30th October 2013 again requesting for release of the money to it. Thereafter, SIPL filed the present petition praying for release of the money and directing the CBDT to consider the application of the Petitioner for release of the money.

24. On 28th October 2014 notice was issued in the said writ petition. A reply has been filed by the Department.

Assessment order

25. The attention has been drawn to the Court to an assessment order dated 31st March 2014 passed by the ITO, Ward I (3), Noida where the entire cash amount seized was attributed to the income of Mr. R.K. Seth and his complete taxable income assessed at Rs. 67,80,860. The AO ordered interest under Section 234A, 234B and 234C of the Act and also issued penalty proceedings under Section 271(1) (c) of the Act

26. In the said assessment order, the after setting out the statement made by

Mr. Seth and the terms of the agreement entered into before HDFC Bank and SIPL, in para 13 the AO noticed that on 17th February 2014 Mr. Seth has filed the photocopies of the cash deposit slips issued by HDFC Bank in the name of the various private parties. According to the AO, the challan slips provided by SIPL did not bear the signature of SIPL except in the case of Trents Limited. The AO then noted that the cash was seized on 9th January 2014 by the Flying Squad Magistrate and that SIPL had no evidence in the shape of challan deposit slips of the customers of the HDFC Bank for the undisclosed cash of Rs. 60,48,672.

Incomplete enquiry by the AO

27. The above conclusion of the AO appears not to be correct since the file produced by the Department before this Court today contains the cash slips recovered from the containers in the armoured vehicle which was seized on 9th January 2012. As already noticed, the file contains photocopies of the slips/10 challans dated 9th January 2012. They contained the names of the following parties with the money (in cash) collected from each of them:

M/s. ITC Ltd.	Rs. 4,434
Mahindra Retail Pvt. Ltd.	Rs. 35,619
Bharti Retail Pvt. Ltd.	Rs. 10,33,938
Bharti Retail Pvt. Ltd.	Rs. 6,98,168
Bharti Retail Pvt. Ltd.	Rs. 4,73,577
M.S. Sport Ltd.	Rs. 20,000
Trent Ltd.	Rs. 3,50,692
Trent Ltd.	Rs. 2,27,961
JDS Apparels Ltd.	Rs. 6,46,190
JDS Apparels Ltd.	Rs. 18,32,990

28. The above information could easily have been verified by the Department by enquiring from the above customers. The account numbers as mentioned in the slips should have been confirmed from the HDFC Bank. The Department was aware that cash was being transported pursuant to the agreement between SIPL and HDFC Bank. This was confirmed in a letter issued by HDFC Bank on 10th January 2012 setting out the names and account numbers of all the customers from whom the collection was made. A copy of this letter was furnished to the Department. Yet no verification was undertaken of the said particulars. The assessment order reveals that enquiries were made with only three parties viz., M/s Mahindra Retail Pvt Ltd, Website- unit of Trent Ltd. and JDS Limited. Those companies confirmed that they had an agreement with HDFC Bank. There is no valid explanation why the AO failed to make enquiries with the other customers. The AO was not therefore justified in coming to an unacceptable conclusion that the seized cash belonged to Mr Seth who was only an employee of SIPL.

Rule 112 F has no application

29. Mr. Rahul Chaudhary referred to Rule 112F of the Income Tax Rules 1962 (the 'Rules') which was meant to deal with a situation where the search results in recovery of money in the territorial area of an assembly or Parliamentary constituency in which an election is going on. In the first place, it requires to be noticed that Rule 112 F was inserted by the Income Tax (14th Amendment) Rules, 2012 with retrospective effect from 1st July 2012. Therefore, it was not in operation when the search in the present case took place, i.e., 9th January 2012. Secondly, Rule 112 F states that when the seizure takes place of "any money, bullion, jewellery or other valuable articles or things from a person in whose possession is found and where the

election is going on in the assembly or parliamentary constituency," the AO "shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made." This by no means states that the AO is relieved of the duty to make an enquiry to determine whether the cash or other valuable articles seized from a person in fact belongs to such person.

30. To be fair Mr. Rahul Chaudhary himself did not contest the position that the legal requirement of the AO having to make an enquiry was not dispensed with by Rule 112 F.

Invalidity of the Department's actions

31. The case on hand raises serious issues since this is neither the first nor the last instance of cash being collected and transported to banks under a valid agreement between the service provider and the Bank. What is of concern in the present case is that despite the Department being told of the agreement between SIPL and HDFC Bank, it proceeded to seize the vehicle and the cash being transported without even a preliminary enquiry by the investigating agency or the AO to verify the details contained in the challans/slips accompanying the cash.

32. Thus there was failure on the part of the Department to discharge its basic responsibility of tracing the source of the cash. The Department was aware that Mr. Seth, one of the employees of SIPL had not accompanied the armoured vehicle. He reached the police station subsequent to the seizure and that too upon the insistence of the JDIT that someone from SIPL should be present before the JDIT to make a statement. In the circumstances, there was no occasion for the Department to assume that

Mr. Seth himself was carrying the cash.

33. To compound the above error, the Department refused to admit to the mistake even when the full facts were placed before it. SIPL was performing a perfectly legitimate and legal task of collecting and transporting cash from the customers of HDFC to the Gandhi Nagar branch of HDFC. The entire service was being performed under a valid agreement. The HDFC also issued a confirmation letter. Despite this the Department made no enquiries with the HDFC Bank. Inexplicably the Investigation wing of the Department abdicated its basic responsibility and simply passed the buck to the AO. Mr R K Seth was only an employee of SIPL. He was not carrying the cash as was wrongly presumed by the AO. His statements offered a plausible explanation which could easily be verified. The Court fails to understand how the said sum could ever be added to the returned income of Mr Seth.

34. The Court agrees with the learned counsel for SIPL that the indifferent and callous approach of the Department's officials has resulted in grave injustice to SIPL. It has had to have its account debited for the entire amount and the seized cash remained in the Department's account. The Court has, in the circumstances, no hesitation in holding the actions of the Department, in refusing to release the cash seized from the armoured vehicle to the Petitioner, to be invalid and illegal.

Consequential directions

35. The Court holds that the assessment order dated 31st March 2014 making the addition of Rs. 60,48,672 to the returned income of Mr. R K Seth is unsustainable in law and the said addition is hereby deleted.

36. The Department is directed to return to SIPL the entire seized amount of Rs. 60,48,748 together with interest @ 12% per annum from the date of seizure of the cash i.e., 9th January 2012 till the date of return which in any event shall take place not later than two weeks from today. The Department will also pay SIPL Rs. 1 lakh as costs within the same period.

37. The writ petition is disposed of in the above terms. Order be given *dasti* to learned counsel for the both parties.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 17, 2016
Rm