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

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W.P.(C) 3793/2017

BALAJI ENTERPRISES

..... Petitioner

Through: Mr Priyadarshi Manish, Ms Anjali J.
Manish and Ms Nidhi Saini, Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr P.C. Aggarwal and Mr J. Vijetha,
Advocates

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W.P.(C) 3848/2017

TATVIK EXPORTS & ORS.

..... Petitioners

Through: Mr Priyadarshi Manish, Ms Anjali J.
Manish and Ms Nidhi Saini, Advocates

versus

UNION OF INDIA & ORS.

.... Respondents

Through: Mr Rahul Jain, Govt. Pleader for R-
1/IOI

Through: Mr P.C. Aggarwal and Mr J. Vijetha,
Advocates

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE PRATHIBA M. SINGH

ORDER

11.10.2017

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1. The grievance of the Petitioners in these two writ petitions concerns the actions of the Respondent No. 2 – Directorate of Revenue Intelligence ('DRI') in freezing the bank accounts of the Petitioners pending issuance of

a Show Cause Notice ('SCN').

2. In W.P.(C) 3793/2017 filed by Balaji Enterprises, it is pointed out that on 27th September 2016, the premises of the Petitioner was searched by the DRI officers and certain documents, two cell phones and one laptop were seized.

3. On 17th October 2016, the Deputy Director, DRI, Noida wrote to HDFC Bank, 18/20, Hindustan Times House, Kasturba Gandhi Marg, Delhi - 110001 directing the freezing of the Petitioner's Account No. 13927630000215.

4. On 25th October, 2016, by another letter, the Allahabad Bank, New Rohtak Road Branch informed the Petitioner that it had been instructed by the Deputy Commissioner of Custom Drawback (Port) Kolkata to "stop any transaction in (A/C No. 50286105313) and not to release any money" to the Petitioner on account of the investigation under process by the DRI. The Petitioner was constrained to approach the Court since the freezing of the above-mentioned bank account has continued since then without any SCN being issued to the Petitioner. Simultaneously, summons have also been issued periodically to the Petitioner, wherein directions were issued for personal appearance and submission of documents. A request was made by the Petitioner on 26th April 2017 seeking defreezing of the bank accounts which has not been acceded to by the DRI.

5. As far as the Petitioners in W.P.(C) 3848/2017 are concerned, a search of the business premises of Petitioner Nos.1, 2 and 3 viz., Tatvik Exports, Rising Roots and Global Metallex LLP at LG-20, D-15, South Extension,

Part-II, New Delhi, was undertaken by the DRI Officers on 27th September 2016. It is stated that on 13th October 2016, Petitioner No. 1 was informed by Yes Bank of a letter of the DRI which was received by it on 28th September, 2016 by which Account No. 001687300001016 of Petitioner No.1 stood frozen. The freezing of the bank account has continued since then. Likewise the Bank A/c No. 001687300000672 of the Petitioner No.2, with Yes Bank, South Extension, Part-II Branch, New Delhi and Bank Account No. 061201601001514 of Petitioner No.3 with Corporation Bank, Civil Lines, Moradabad stood frozen.

6. The Petitioners state that pursuant to the summons issued to each of them, they have been appearing before the DRI and providing information and documents. However, till date no SCN has been issued and the accounts remain frozen.

7. Pursuant to the notice issued in these petitions, replies have been filed in which, *inter alia*, it is averred by the DRI that certain duty free consignments of imported brass scrap were diverted to the market. The allegations as far as the Petitioners are concerned are that they purchased such duty free brass scrap for the purposes of export of the finished goods.

8. As far as the freezing of the bank account of the Petitioners is concerned, in the para-wise reply, para 7 (C) and (D) states as under:

“C. The transactions from bank account were ordered to be stopped on the basis of finding of search which indicated that the said accounts were being used to route the money through various entities and ultimate withdrawal in cash by these accounts or other accounts operated by the petitioners and their accompanies.

D. Transactions from bank account were ordered to be stopped with the purpose to safeguard the Drawback money available in the said accounts and to prevent the diversion of the money to other dummy companies through which the money was ultimately drawn in cash. In this case the petitioner firms has transferred Rs.1.78 Crores to Mis Sunrise Exports, Moradabad. Mis Sunrise Exports was created by Shri Shray Kumar making his cook/domestic-help as proprietor. Rs.25.53 Crores has been withdrawn in cash from M/s Sunrise Exports and Rs.1.99 Crores has been transferred to Sri Shray Kumar, his partners and the firms wherein they are either proprietor or partner. Therefore, it is evident that the money from accounts of petitioner firm have been ultimately routed to Shri Shray Kumar and Shri Pawan Arora.”

9. As far as W.P.(C) 3793/2017 is concerned similar explanation is offered in the para-wise reply in para 7 (C) and (D). Significantly, in both the replies in the para-wise replies it is stated in para 7 H that, “No proceeding under Section 110 of the Customs Act, 1962 was undertaken as there was no stock of any goods with the Petitioner firms.”

10. The Court asked the learned counsel for the Respondents to explain the justification for freezing the Petitioners bank accounts for over one year without any reference to the provisions of the Customs Act, 1962 ('Act') which permits such action. Initially, the learned counsel for the Respondents sought to refer to Section 110 (1) & (3) of the Customs Act, 1962 which read thus:

“SECTION 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) xx xx xx xx xx

(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.

11. However, as already noted hereinbefore, in the reply filed it has been categorically stated that no proceedings under Sections 110 of the Act have been undertaken “as there was no stock of goods with the Petitioners firms.

12. On the contrary, the learned counsel for the Petitioners has referred to a number of decisions, including *Khaja Mustafa Kamal v. Union of India 2016 (337) ELT 221 (Bom)*, *Rajendra Vitthal Shinde v. Union of India 2016 (332) ELT 699 (Bom)* and *Laxman Overseas v. Union of India 2010 (252) ELT 512 (Del)* where a similar freezing of bank account has been held to be illegal. The decision of this Court in *Laxman Overseas v. Union of India* (supra) has been followed in *Multitek Engineers v. Union of India 2013 (287) ELT 44 (Kar)* where the bank accounts were asked to be de-frozen.

13. Learned counsel for the Respondents has referred to another decision dated 16th March, 2017 passed in W.P.(C) No.12251/2016 (*Lal Mahal Ltd. v. Union of India*) where while ordering the de-freezing of the bank account, the Court required the Petitioner to furnish a bank guarantee. It is accordingly submitted that in this case also, the Petitioners may be asked to furnish some security for de-freezing the bank account.

14. The Court is unable to accept the above submission of the Respondents. Without there being any authority in law to justify the freezing of the bank accounts, requiring the Petitioners to furnish security for de-freezing such bank accounts would be unjustified. It is always open to the DRI to conclude the investigation and issue a SCN in accordance with law. Statutory authorities have to exercise their powers strictly according to the Act under which they function. In *Khaja Mustafa Kamal v. Union of India* (supra), in similar circumstances, it was observed as under:

“19 Once there are allegations of fraud the Revenue has a larger responsibility and duty to the public. It cannot refuse to take all steps and rest only on freezing of bank accounts of the alleged defaulters. **That such an act and which is to be found traceable to different powers and of the nature conferred in the Customs Act, 1962, will not permit the respondents to deprive parties like the petitioner of their source of livelihood. They cannot stop their business by continued freezing of their bank accounts. It is further very clear and requires no reiteration that what is prohibited directly cannot be achieved indirectly or in an oblique manner. A refusal to carry out a duty in accordance with law cannot be justified by such a continued attachment and freezing of the bank accounts.** In the given facts and circumstances, we do not see any justification for the same.” (emphasis supplied)

15. Accordingly, the Court directs that the bank accounts of all the Petitioners i.e. Account No. 50286105313 in Allahabad Bank, New Rohtak Road Branch; Account No. 13927630000215 at HDFC Bank Ltd., 18/20, Hindustan Times House, Kasturba Gandhi Marg, Delhi -110001 both of M/s.Balaji Enterprises and Account No. 001687300001016 of the Petitioner No.1 Tatvik Enterprises; Account No. 001687300000672 of the Petitioner No.2 Rising Roots both with Yes Bank, South Extension, Part-II Branch,

New Delhi and Account No. 061201601001514 of Petitioner No.3 Global Metallex LLP with Corporation Bank, Civil Lines, Moradabad shall be de-freezed forthwith. The DRI is directed to write to the concerned banks immediately to permit the Petitioners to operate the accounts forthwith. If no such instructions are issued within a period of three days from today, acting on the strength of this order, the Managers of the aforesaid banks, shall permit the respective Petitioners to operate their respective accounts.

16. The Petitioners will continue to cooperate in the investigation.

17. The petitions are disposed of in above terms.

18. *Dasti* under the signatures of the Court Master to the parties.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

OCTOBER 11, 2017
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