IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 377 OF 2018

M/s Shantai Industries Limited .. Petitioner
V/s
Union of India and Anr. .. Respondents

WITH
WRIT PETITION (L) NO. 378 OF 2018

M/s Shantai Exim Limited .. Petitioner
V/s
Union of India and Anr. .. Respondents

WITH
WRIT PETITION (L) NO. 379 OF 2018

M/s Sawlani Synthetics Pvt. Limited .. Petitioner
V/s
Union of India and Anr. .. Respondents

Mr. Prakash Shah with Mr. Anil Balani, Mr. Rohan Balani and Mr.Vineet Dubey for the petitioners.

Mr. Pradeep Jetly for the respondents.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : 6th FEBRUARY 2018

<u>P.C.</u>:

By these petitions under Article 226 of the Constitution of India, the petitioners are challenging the communications addressed by the Directorate of Revenue Intelligence to the Bankers, namely Kotak Mahindra Bank and Bank of Baroda, the branches of both at Surat, in which the petitioners have current accounts.

2. Mr. Shah, in support of these petitions, would submit that by its very nature the current accounts are maintained by the bankers at the request of and pursuant to a contract in that behalf with the customers/clients like the petitioners so as to facilitate day to day operations of ongoing business.

3. Mr. Shah would submit that the business activities of the petitioners are totally paralysed. These companies are engaged in the business of export of fabrics and readymade garments. They are group of companies known as "Sawlani Group". It is in the business for past 25 years. The business is conducted by complying with the provisions of the Customs Act, 1962. M/s Shantai Industries Ltd. has been exporting consignment of fabrics and readymade garments from Nhava Sheva Port. On several occasions in the past, the export consignments were cleared after proper procedure was followed. The petitioners assert that at no point of time in the past was there any discrepancy noted in the transactions nor were these

transactions put under scrutiny, verification, leave alone detailed investigation.

4. The petitioners state that certain consignments sought to be exported by one of the group companies came under the scanner of respondents and they commenced investigation. A search was carried out of the premises of M/s Shantai Exim Ltd. on 18th September 2017. After search of the premises, some persons connected with these companies were arrested and taken to the office of the Directorate of Revenue Intelligence, Mumbai (for short "DRI") for further investigation. These persons were released on the next day after a sum of Rs.5 crores was deposited as required by the DRI.

5. Thereafter the Directors were summoned for recording their statements which were also recorded. Further searches were carried out in the premises belonging to the petitioners and related concerns and persons connected with their affairs were summoned by the DRI.

6. The petitioners state that though the officers of the DRI carried on their searches, seizures and effected arrests, they continued investigation even by recording statements. There was no resistance by the petitioners. However, all of a sudden, the petitioners were informed by their bankers that the DRI has issued

the communications freezing debit balance in their accounts. In other words, the debit operations from the accounts were not to be allowed till further instructions are received from the DRI, Mumbai Zonal Unit. In view of these communications, their business operations have come to standstill.

7. Mr. Shah would submit that the powers to freeze the bank accounts are now resorted to routinely by the DRI. The DRI commences investigations. These investigations are carried out sporadically. They are spread over months together. However, before the investigations are concluded, letters are addressed to the bankers freezing the accounts. According to Mr. Shah, the impact of these communications is severe and drastic. Even if any amount is deposited by the debtor of the petitioners or the petitioners receive the export proceeds by regular mode, that sum may be deposited in the accounts, but would not be allowed to be withdrawn. That would mean the petitioners cannot conduct day to day activities and incur expenses for payment of salary, import and export bills etc. This would totally paralyse their business activities. In the present case, though the searches were carried out way back in August 2017, neither any show cause notice is issued nor any adjudication order has been passed. There is no hope that the freezing on accounts would be raised and shortly. This is the reason why the petitioners have approached this Court in writ jurisdiction.

8. On the other hand, Mr. Jetly appearing on behalf of the DRI, says that an affidavit of the Deputy Director has been filed. That affidavit shows as to how these petitions are an abuse of the process of law. The petitioners are bent on pre-empting the investigation and which concerns a huge fraud on public exchequer. The exports are fraudulent. The exports are of very cheap variety of goods. Their prices are inflated in order to claim drawback of excise duty, customs duty and other benefits. In the circumstances, we should not entertain these petitions and they should be dismissed.

9. With the assistance of Mr. Shah and Mr. Jetly, we have perused the writ petitions and the annexures thereto. The affidavit in reply filed by the DRI would refer to several legal provisions and facts and virtually sets out the Revenue's version on merits of the case investigated by the DRI. We have not called for any such affidavit. It is now a practice that DRI files an affidavit, relies upon the investigation and states that it has a strong prima facie case. According to the DRI, the case investigated pertains to fraudulent exports. The details of the so-called fraud are then set out in the affidavit in reply. We are not concerned with the detailed version of the DRI on merits. All that we are concerned with is the exercise of a drastic power by the DRI of freezing the bank accounts of the assessees or the persons in default. For that freezing or attachment of bank accounts, there must be strong prima facie material pointing towards a systematic fraud or attempt to defraud the public exchequer.

10. In this case, when the petitioners state that to the knowledge of the DRI and the Customs Department, they have been importing consignments, having them cleared by payment of duty or otherwise exporting the goods with compliance of the Customs Act, 1962, suddenly there was no need to investigate their cases. We are inclined to accept this submission of Mr. Shah only to the extent that there is no prohibition against investigation of old cases and past transactions, but in the garb of such investigation and scrutiny, the need for freezing and attaching the bank accounts should be made out by referring to and production of necessary materials.

11. In the present case, vide communications to the bankers, which is of two lines, by the DRI, it is informed that the DRI is investigating wrong availment of duty drawback by the exporters M/s Shantai Exim Ltd., M/s Shantai Industries, M/s Wheel and Axle Textile Ltd. and M/s Sawlani Synthetics Pvt. Ltd., and during the course of which it has come to its notice that the companies are having accounts with Bank of Baroda and Kotak Mahindra Bank, branches of both at Surat. The debit operations from these accounts are prohibited till further instructions are received from DRI. If not to the bankers of the petitioners, at least to the Court the need and expediency for issuing such directions should be demonstrated and proved. We did not ask for any version on merits. We asked justification for issuing these communications to the bankers and

beyond stating that there is a huge fraud of public revenue by availment of duty drawback for which the bank accounts have been frozen, nothing is placed before us except the allegations of the DRI. There is a difference between wrongful availment of duty drawback and fraudulent utilisation thereof. Presently, nobody can gauge for itself, much less finally, that the investigations point towards wrongful or fraudulent availment of duty drawback. These are mere allegations. On mere allegations alone and without any serious and real apprehensions, the Revenue could not have taken the drastic measure of freezing the bank accounts. Something more was required to be brought before the Court to justify this drastic action. We have therefore no hesitation in concluding that in the facts and circumstances of the present case, this drastic action was not justified and called for.

12. The respondents are well aware that they will have to issue a show cause notice setting out the allegations, call for an explanation from the petitioners and thereafter deal with it by passing a speaking order. Thus, the adjudicatory process would have to be undertaken and that is admitted before us. This process was required to be undertaken, but no show cause notice has been issued till date. When we asked Mr. Jetly as to why the bank accounts should be frozen, Mr. Jetly's response is that every receipt in this account and which would be eventually taken away by the petitioners is in the form of availment of duty drawback. In other

words, the duty drawback or refund is the only sum which would be credited in the account and there are no genuine sale proceeds which would be brought and credited in this account. Thus, no genuine business operations would be carried out by such companies as are before this Court and they are only medium to obtain the duty drawback benefits. We cannot presume all this in the absence of strong prima facie materials, particularly in the form of a show cause notice to the petitioners. Merely because the investigations are pending, we are not inclined to accede to the request of Mr. Jetly to continue the freezing order till all investigations are concluded and show cause notices are issued. We are not inclined to presume merely on the basis of the affidavit in reply filed by the Revenue that the adjudication process will necessarily result in a demand for payment of duty, interest and penalty. In the circumstances, we propose to balance the rights and equities by passing the following order and directions. We do so accordingly.

(i) We direct that in relation to each of the export transactions, which have been undertaken by the petitioners during the course of the investigation by the Revenue, all the requisite details, including documents in relation thereto, shall be forwarded to the DRI.

(ii) Once the bank account is credited with any amount or export proceeds, the petitioners shall file the requisite declaration form and also give an undertaking that in the event any benefit or concession is claimed by them, that will be subject to the outcome of the adjudication by the Revenue. Once the account is credited with such amount or proceeds as are earned and generated by the petitioners, then, equally, while withdrawing the sums, they will forward the details to the DRI together with supporting documents.

(iii) Since there is a complaint that the business operations would be paralysed, we direct that within a period of 10 days from the amount being credited or withdrawn, the requisite particulars, documents etc. shall be forwarded to the DRI.

(iv) The DRI shall be at liberty to call for further details and particulars as may be necessary.

(v) The petitioners forwarding the particulars, documents along with the supporting documents and declarations to the DRI will be without prejudice to the petitioners' rights and contentions in the eventual adjudication proceedings.

(vi) When the respondents are being directed to accept the documents in relation to the proceeds or the amounts deposited in the bank accounts, it is needless to clarify that it is without prejudice to the exercise of powers of investigation and adjudication.

(vii) The DRI shall proceed with its investigations, conclude them and even issue show cause notice/s. It can also proceed with the adjudicatory process and this order and directions shall not be construed as a restraint or prohibition with regard to the same.

(viii) On the above conditions and particularly of supply and forwarding of requisite particulars and documents by the petitioners in relation to the amounts credited, the impugned orders shall not be given effect to and the freezing order to that extent stands quashed and set aside.

(ix) Needless to clarify that if any credit facilities are granted by the bankers based on the relationship with the petitioners, that will be subject to the powers of the DRI and those overriding powers can be exercised irrespective of any credit or finance arrangement between the petitioners and the bankers.

(x) Needless to clarify that the banking operations, including any credit or financial arrangement between the petitioners and the bankers, remains unaffected and untouched by this order.

(xi) The writ petitions are disposed of with the above directions with no order as to costs.

(SMT. BHARATI H. DANGRE, J.) **(S.C. DHARMADHIKARI, J.)**