IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 05.02.2018

\+ **W.P.(C) 237/2018 & CM No. 1023/2018**

S. B. INTERNATIONAL ..... Petitioner

Versus

THE ASSISTANT DIRECTOR, DIRECTORATE OF REVENUE INTELLIGENCE AND ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Randhir Singh and Mr D.K. Devesh.

For the Respondents : Mr Aditya Singla, Senior Standing Counsel for DRI with Ms Drishti Harpalani and Mr Pallav Gupta, Advocates for R-1, 2 & 3. Mr Lavleen Goyal, Advocate for R-4/Axis Bank.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The present petition has been filed by Shri Premji Bhanushali, who carries on his business, *inter alia,* under the name and style of a sole proprietorship concern, S. B. International. The petitioner impugns a letter dated 14.11.2017 (hereafter 'the impugned communication') issued by the Assistant Director, Directorate of Revenue Intelligence (DRI) calling upon respondent no.4 (AXIS

Bank) to freeze the petitioner's current account (account bearing no.915020000095184) maintained with the AXIS Bank.

2. The DRI has issued the impugned communication as it is suspected that the petitioner is connected/involved in illegal import of tyres which are being investigated.

3. The petitioner claims that the impugned communication is without the authority of law as no order has been passed under the Customs Act, 1962 (hereafter 'the Customs Act').

4. The principal question, which falls for consideration of this Court in this petition is whether the DRI has the jurisdiction to issue such directions without passing any orders under the provisions of the Customs Act.

5. Briefly stated, the relevant facts necessary to address the aforesaid controversy are as under:-

5.1 The petitioner states that certain officers of the DRI conducted a search in the godown/warehouse of the petitioner on 09.11.2017. He states that the search was conducted in accordance with the provisions of the Customs Act and a *Panchnama* was drawn. The petitioner further states that the office premises of the petitioner was also searched in the presence of witnesses after complying with the provisions of Section 105 of the Customs Act; however, nothing incriminating was found during the said search.

5.2 On 14.11.2017, respondent no.1 sent the impugned communication to Axis Bank for freezing the petitioner's account with that bank.

5.3 The Senior Intelligence Officer (SIO), DRI issued summons dated 27.11.2017 under Section 108 of the Customs Act calling upon the petitioner (Shri Premji Bhanushali) to appear before him on 28.11.2017, *inter alia,* to tender his statement. He was also called upon to produce the bank statements of his proprietorship concern (S. B. International) for the period 2014-15 till date as well as the sales/purchase bills for the said period. The opening paragraph of the aforesaid summons indicates that summons was issued in connection with an inquiry instituted against M/s Marina Enterprises (IEC No.11159000692).

5.4 The petitioner claims that he appeared before the concerned officer as directed and was kept in illegal custody and detention from 28.11.2017 to 01.12.2017. The petitioner states that his statement was recorded at the Indore Regional Unit of the DRI and, thereafter, he was taken to Mumbai where his statement was recorded. He alleges that the said statement was recorded under duress and coercion.

5.5 The petitioner claims that while he was in custody of the officials of DRI, he was handed over another summons to appear on 05.12.2017 before the DRI at Indore. The petitioner states that he returned to Delhi and due to his ill health, he was not in a position to appear before the DRI officials at Indore, on 05.12.2017. Accordingly, he sent a letter informing the concerned officer(s) of his inability to appear before them on 05.12.2017 due to his ill health.

5.6 It is stated that the officers of the DRI conducted a raid in the factory/godown/warehouse of the petitioner on 05.12.2017.

5.7 The petitioner sent a letter dated 09.12.2017 to the Additional Director General (ADG), DRI requesting the DRI to de-freeze the bank account maintained by the petitioner with AXIS Bank.

5.8 The petitioner received a letter dated 30.12.2017 from the AXIS Bank informing the petitioner firm that the said account would remain frozen until further instructions/orders are received from the DRI.

5.9 The petitioner states that he is not the importer in respect of the transactions being investigated by the DRI. He claims that tyres were imported by M/s Marina Enterprises (IEC No. 11159000692), M/s Vinayak Enterprises (IEC No. 1116500442) and M/s Reet Traders (IEC No. 5614000119) and the petitioner used to purchase goods from M/s Marina Enterprises as he knew the proprietor of the said concern. It is also asserted by the petitioner that even though the petitioner had assisted the importers in identifying the items of import as well as the source from where the goods could be imported, the petitioner was not an importer and, therefore, cannot be held liable for any irregularity in import of the products in question (tyres).

6. The petitioner has made several assertions in the petition including that his nephew and his brother-in-law were apprehended from the factory premises of S.B. International. He has also mentioned that a petition seeking writ of Habeas Corpus was filed in this Court.

However, given the limited scope of the present petition, it is not necessary to advert to other assertions made in the petition.

7. The respondents have not chosen to file any response to this petition; however, a brief note of submissions made on their behalf, was filed by the counsel.

8. Mr Aditya Singla, the learned Senior Standing Counsel appearing for the DRI contended that the officers of the DRI have been appointed as officers of Customs/proper officers and, therefore, are empowered to carry on investigation under the Customs Act. He submitted that in terms of Section 110 of the Customs Act, officers of the DRI (being 'proper officers') are empowered to seize goods and documents.

9. He submitted that the powers of investigation granted to 'proper officers' have to be considered along with the provisions of Section 4(2) of Code of Criminal Procedure (hereafter 'CrPC'). He referred to the decision of the Supreme Court in ***Directorate of Enforcement v. Deepak Mahajan & Anr: (1994) 3 SCC 440*** in support of his aforesaid contention.

10. Next, he referred to Section 102 of CrPC and contended that in terms of the said Section, any police officer was entitled to seize any property, which is found under circumstances that create suspicion of commission of any offence. He referred to the decision of the Supreme Court in the case of ***State of Maharashtra v. Tapas D. Neogy: (1999) 7 SCC 685*** and on the strength of the said decision

contended that seizure of bank accounts was permissible under Section 102 CrPC.

11. Mr Randhir Singh, the learned counsel appearing for the petitioner countered the aforesaid submissions and contended that the investigations being carried out by the DRI were under the Customs Act and this was clear from the summons issued to the petitioner under Section 108 of the Customs Act. He contended that the Customs Act is a complete code and freezing of the petitioner's bank account, which is not supported by any order passed under the Customs Act, is wholly illegal and without jurisdiction.

12. Mr Singh referred to various decisions in support of his contentions: **(i)** ***Shakuntala Singh v. Addl. DRI, Kolkata Zonal Unit : 2016 (332) E.L.T. 77 (Cal.).***; ***(ii) Mineral Metal Centre v. Dir. General of Central Excise Intelligence*** : ***2016 (333) E.L.T. 267 (Cal.)***; ***(iii) Ravi Crop Science v. Union of India***: ***2015 (323) E.L.T. 558 (Del.); (iv) Raghuram Grah Pvt. Ltd. v. Commissioner of C. Ex. & Service Tax*** : ***2005 (186) E.L.T. 50 (All.); (v) MK International v. Union of India*** : ***2007 (209) E.L.T. 15 (P & H); (vi) Laxman Overseas v. Union of India*** : ***2010 (252) E.L.T. 512 (Del.); (vii) Lal Mahal Ltd. v. Union of India*** : ***2017 (355) E.L.T. 243 (Del.); and (viii) Commissioner of Cus. & C. Ex., Bhopal v. D.K. Singh*** : ***2006 (199) E.L.T. 202 (M.P.)***

Reasons and Conclusion

13. Concededly, the impugned communication or impugned order has been issued by the DRI in connection with the investigations being

conducted under the Customs Act. Mr Singla contended that the DRI officials were proper officers within the meaning of Section 2(34) of the Customs Act and were duly empowered to carry out the investigations regarding smuggling of goods. He contended that the petitioner was suspected of being involved in smuggling of tyres and, therefore, the DRI Officials were well within their jurisdiction to pass an order for freezing the petitioner's bank account.

14. Admittedly, Chapter XIII of the Customs Act contains provisions regarding search, seizure and arrest. In terms of Section 105(1) of the Customs Act, if the specified officer has reason to believe that any goods are liable to confiscation or any documents or things, which in his opinion will be useful for or relevant to the proceedings under the Act, are secreted in any place, he may authorize any officer of Customs to search or may himself search for such goods, documents or things. Section 105(1) of the Customs Act is set out below:-

> "**105. Power to search premises**.-(1) If the [Assistant Commissioner of Customs or Deputy Commissioner of Customs], or in any area adjoining the land frontier of the coast of India an officer of customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation, or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act, are secreted in any place, he may authorize any officer of customs to search or may himself search for such goods, documents or things."

15. It is clear from a plain reading of Section 105(1) of the Customs Act that the specified officers must have "reason to believe" that any goods are liable to confiscation or any documents or things, which are useful or relevant to the proceedings have been secreted. A mere reason to suspect would not be sufficient for authorizing search of any premises. Further, Section 105(2) of the Customs Act expressly provides that the provisions of CrPC would apply to such searches except that the copies or the record made under Section 165(1) or 165(3) would be sent to the Principal Commissioner of Customs or Commissioner of Customs instead of the "Magistrate" as required under Section 165(5) of CrPC. Thus, it does appear that whenever the provisions of CrPC were to be applied, the Parliament had specifically enacted that those provisions of CrPC would be applicable.

16. Section 110 of the Customs Act provides for seizure of goods, documents and things. The said Section is set out below:-

> "**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:
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> 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.
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> (1A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official

Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

(1B) Where any goods, being goods specified under sub-section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceeding under this Act and shall make an application to a Magistrate for the purpose of-

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or

(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

(1C) Where an application is made under sub-section (1B), the Magistrate shall, as soon as may be, allow the application.

(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.

(4) The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extract therefrom in the presence of a officer of customs."

17. It is also relevant to refer to Section 121 of the Customs Act, which provides for confiscation of sale proceeds of smuggled goods. The said section reads as under:-

> "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."

18. It is clear from the above that the Customs Act contains express provisions for conduct of search and seizure. In terms of Section 110(1) of the Customs Act, the proper officer has the power to seize goods provided he has "reason to believe" that the goods are liable for confiscation. The words "reason to believe" are material and the Customs Act does not contemplate seizure of goods only on mere suspicion.

19. Mr Singla had also referred to Section 110(3) of the Customs Act, which empowers a proper officer to seize any documents or things. Undisputedly, the proper officer is empowered to seize any documents or things; however, such seizure is permissible only where he is of the opinion that such documents or things would be useful or relevant to any proceedings under the Customs Act. It is not necessary that the documents or things seized must in final analysis be found to

be useful or relevant for the proceedings under the Customs Act. However, it is necessary that the proper officer must at the relevant time form a *prima facie* opinion that the documents or things in question would be relevant and useful for the proceedings under the Customs Act. And, such opinion must be reasonable and *bona fide*.

20. In ***Laxman Overseas v. Union of India*** (*supra*), a Coordinate Bench of this Court referred to Section 110(3) of the Customs Act and held that "*the formation of a prima facie opinion by the proper officer is a pre-requisite for the exercise of the power of seize any goods, documents or things. The opinion to be formed is that they would be useful for, or relevant to, any proceeding under this Act*".

21. Section 121 of the Customs Act also provides for confiscation of sale proceeds of smuggled goods where such goods are sold by persons having knowledge or reason to believe that the goods in question are smuggled goods.

22. In the aforesaid context, the first and foremost question to be addressed is whether it would be open for the DRI officials to take recourse to Section 102 of CrPC for seizing any property. Section 102 of CrPC reads as under:-

> "**102. Power of police officer to seize certain property**.-(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.
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> (2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

> (3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.
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> Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale."

23. The Customs Act is a special Act and clearly the provisions of the Customs Act would override the general provisions of CrPC. As noticed above, specific provisions have been made under the Customs Act with regard to search and seizure. The Parliament has in its wisdom expressly enacted the conditions to be satisfied before powers of search and seizure can be exercised. Thus, the question of Section 102 of CrPC being applicable does not arise.

24. Mr Singhla contended that seizure under Section 110(1) of the Customs Act is only permissible where proper officer has reason to believe; however, in terms of Section 102 of CrPC, seizure is also

permissible on a mere suspicion and, therefore, it would be permissible for the DRI officials to first effect seizure under Section 102 of CrPC till they find any "reason to believe" that the goods are liable for confiscation; they could, thereafter, proceed to effect seizure under Section 110(1) of the Customs Act. The aforesaid contention is bereft of any merit. The Customs Act is a special Act and exhaustive provisions have been enacted for conducting search and seizure under the said Act. The provisions of the Customs Act contains the checks and balances considered necessary by the Parliament while enacting provisions for search and/or seizure in relation to violations under the Customs Act. It is thus not open for the DRI officials to circumvent those checks and balances by taking recourse to Section 102 of CrPC. Powers of search and seizure are draconian in nature and any provision granting such powers must be strictly construed.

25. Having stated the above, it is also necessary to note that Section 102(1) of CrPC permits any police officer to "*seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence*". Apart from the reason that the investigations are being conducted under the Customs Act and the provisions of Section 102 of CrPC are not available as discussed above; the impugned communication is also not sustainable under the provisions of Section 102 of CrPC for several reasons.

26. First of all, the power is available only to any "police officer" and as held by the Supreme Court in ***Surjeet Singh Chhabra v Union***

of India & Ors: (1997) 1 SCC 508, the DRI officials are not police officers (Also see: ***State of Punjab v. Barkat Ram***: ***AIR 1962 SC 273***). In ***Directorate of Enforcement v. Deepak Mahajan*** (*supra*), which was relied upon by Mr Singhla, the Supreme Court had noted that there are series of decisions holding that Officers of Enforcement or Customs Officers are not police officers although they are vested with powers of arrest and other analogous powers. Paragraph nos. 109 & 110 of the said decision are relevant and are quoted below:-

> "109. No doubt, it is true that there are a series of decisions holding the view that an Officer of Enforcement or a Customs Officer is not a police officer though such officers are vested with the powers of arrest and other analogous powers. Vide *Ramesh Chandra v. State of W.B.* and *Illias v. Collector of Customs, Madras*. In the above decisions, this Court has held that the above officers under the special Acts are not vested with the powers of a police officer qua investigation of an offence under Chapter XII of the Code including the power to forward a report under Section 173 of the Code. See also *State of Punjab v. Barkat Ram* and *Badku Joti Savant v. State of Mysore*.
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> 110. As we have pointed out in the preceding part of this judgment, Section 167(1) falls under Chapter XII relating to "Information to the Police and their powers to investigate". Sub-section (1) of Section 167 speaks of the arrest by a police officer and the follow-up investigation by him. Section 35(1) of FERA and Section 104(1) of the Customs Act empower the authorised officer under the relevant provisions to effect arrest of a person against whom there is reason to believe that he has been guilty of an offence under the respective concerned Acts."

27. Although, in ***Deepak Mahajan's*** case (*supra*), the Supreme Court held that a Magistrate would have the power to remand an accused under Section 167(2) of CrPC, the Court did not hold that Customs Officers were "police officers" and, thus, could exercise the powers under Chapter XII of CrPC. It is also clear that the Court did not overrule its earlier decisions whereby it was held that officers under the special Acts (such as the Customs Act) are not vested with powers of a police officer *qua* investigation of an offence under Chapter XII of CrPC and as such continue to be good law.

28. Secondly, it is also relevant to note that power of a police officer to seize any property is contingent upon: (i) whether such property may be alleged or suspected to be stolen; or (ii) which may have been found under circumstances which create suspicion of commission of any offence. In the present case, the investigation had commenced and freezing order had been issued subsequently. Thus, it is difficult to understand as to how the petitioner's bank account (assuming that a bank account is a property) could be stated to have been found under circumstances which had created suspicion of commission of an offence. It appears that the sequence is quite the reverse; the DRI officials suspected commission of the offence of smuggling of goods and during the course of investigation issued orders freezing the petitioner's bank account.

29. Lastly, in terms of Section 102(3) of CrPC, it is necessary for the police officers to report seizure to a Magistrate. Plainly, no such procedure was followed. Mr Singhla contended that no such procedure

is required to be followed by virtue of Section 110(3) of the Customs Act. This contention clearly brings into focus the fallacy in the contentions advanced on behalf of the DRI. It is conceded that powers under section 110(1) of the Customs Act cannot be exercised as the necessary precondition of the proper officer having *reason to believe* that the goods are liable for confiscation, is absent. There is also no formation of any opinion as required under Section 110(3) of the Customs Act. Therefore, it is claimed that the officers have a recourse to Section 102 of CrPC. But, the procedure of Section 102 CrPC is also not complied with because the DRI officers are not police officers and are acting under the Customs Act. Plainly, it would not be permissible for the DRI to justify its actions by partly reading one provision of CrPC and circumventing the checks and balances contained therein by referring to the provisions of the Customs Act, which concededly have not been complied with.

30. The reliance placed by Mr Singla upon the provisions of Section 4(2) of CrPC is also misplaced. Section 4 of CrPC reads as under:-

> "**Section 4 – Trial of offences under the Indian Penal Code and other laws**:
>
> (1) All offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.
>
> (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the

manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

31. It is apparent from the above that although Section 4(2) of CrPC postulates that all offences under any other law would be investigated, inquired into and tried in accordance with the Provisions of CrPC, it is also expressly stipulated that the same is subject to any enactment regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. In the present case, the Statute regulating the alleged offences is the Customs Act and as observed above, the Customs Act contains exhaustive provisions with regard to seizure and search. Thus, plainly the provisions of Section 4(2) of CrPC would be of little assistance to the respondents.

32. The decision in the case of ***Deepak Mahajan*** (*supra*) also does not advance the DRI's case. In that case, the following question fell for consideration of the Supreme Court:-

> "Whether a Magistrate before whom a person arrested under sub-section (1) of Section 35 of the Foreign Exchange Regulation Act of 1973 which is in *pari materia* with sub-section (1) of Section 104 of the Customs Act of 1962, is produced under sub-section (2) of Section 35 of the Foreign Exchange Regulation Act, has jurisdiction to authorize detention of that person under Section 167(2) of the Code of Criminal Procedure?"

33. Section 104(1) of the Customs Act and Section 35(1) of Foreign Exchange Regulation Act, 1973 (FERA) confer powers on officers authorized to effect such arrest. Section 104(2) of the Customs Act and Section 35(2) of FERA expressly provide that every person

arrested under the said Acts would be produced without unnecessary delay before a Magistrate; however, the provisions of the said Acts (Customs Act and FERA) are silent as to the powers of the Magistrate. There are no provisions as to what the Magistrate is required to do once the person arrested is produced before the Magistrate. It is in this context, the Court held that where the provisions of the special Acts (Customs Act & FERA) are silent, the provisions of CrPC could be applied by virtue of Section 4(2) of CrPC. In the present case, the provisions of the Customs Act are not silent as to the manner in which seizure is to be carried out; on the contrary, the Customs Act expressly provides the circumstances in which such powers can be exercised. The decision in the case of ***Deepak Mahajan*** (*supra*) cannot be read as an authority for the proposition that all provisions of CrPC are applicable for the purposes of investigating, inquiring into, trying or otherwise dealing with offences under any other law, notwithstanding the provisions enacted for the said purpose under those laws.

34. There is yet another issue, which needs to be addressed and that is whether the operations on bank accounts could be interdicted. There is no provision under the Customs Act which permits the proper officer to direct freezing of bank accounts. Section 110(1) of the Customs Act provides for seizure of goods. The term "goods" is defied under Section 2(22) of the Customs Act, which reads as under:

> "2(22) "goods" includes--
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> (a) vessels, aircrafts and vehicles;
>
> (b) stores;

(c) baggage;

(d) currency and negotiable instruments; and

(e) any other kind of movable property."

35. Section 3(36) of the General Clauses Act, 1897 defines movable property as under:

> "3(36) 'movable property' shall mean property of every description, except immovable property."

36. Section 3(26) of the General Clauses Act, 1897 defines immovable property as under:

> "3(26) 'immovable property' shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth."

37. Thus, the amount in a bank account which represents the sale proceeds of smuggled goods can be confiscated in terms of Section 121 of the Customs Act and can also be seized under section 110 of the Customs Act. But, there is no provision which permits freezing of bank accounts. Even if the credit balance of a bank account is considered as goods which can be seized, there is no authority in law to suspend operations in a bank account.

38. The decision rendered in the case of ***State of Maharashtra v. Tapas D. Neogy*** (*supra*) is of little assistance to the respondents as it was rendered in the context of Section 102 of CrPC. The Court had held that bank account would fall within the expression "property" which could be seized under Section 102(1) of CrPC. A closer examination of the said decision also indicates that the Court had proceeded on the basis that the bank accounts reflected positive

balances (credit balances) and, therefore, represented certain moneys due from the bank. Indisputably, a credit balance in a bank account is an asset of the account holder and the said asset may be seized or attached provided the same is permissible in law. However, if the bank account is an overdraft account, the same would represent a liability owed by the account holder and, therefore, question of seizing the same or attaching the same would not arise.

39. Freezing a bank account is not the same as seizing an asset; it interdicts operation of a bank account and it deprives the account holder of banking facilities. Indisputably, there is no sanction in the Customs Act for such action.

40. In ***Shakuntala Singh v. Addl. DRI, Kolkata Zonal Unit*** (*supra*)**,** the Calcutta High Court considered a case where the DRI had directed the bank with which the petitioner was maintaining its account not to permit any debts. The Court held that the DRI was undoubtedly entitled to proceed with the investigation and take appropriate action against the petitioner in accordance with law; however, there was no provision where the DRI could prevent banking operations pending investigations. The Court referred to Section 121 of the Customs Act and observed that "*the Section can only be invoked on a specific finding that smuggled goods have been sold. Operations can only be prevented in respect of the sale proceeds of smuggled goods*". And, since in the said case, no specific order under Section 121 of the Customs Act had been passed, the Court directed that the petitioner be allowed to operate its accounts.

41. In ***Raghuram Grah Pvt. Ltd.*** (*supra*), a Division Bench of the Allahabad High Court had considered a challenge to an order freezing the bank accounts of the petitioner therein. Search and seizure operations had been conducted by the officials of the Central Excise Department in the residential premises of the second petitioner therein and certain documents, cash, etc. were seized. The current account of the first petitioner was also frozen. The application for release of bank accounts was also rejected. The Court accepted the plea that since no proceedings under Section 110 of the Customs Act had been initiated against the petitioner, there was no justification for debarring the petitioners therein from operating the bank accounts. The Court passed the following order:-

> "6. As we find no provision nor any authority under which the bank account can be freezed pending investigation we are left with no option but to quash the order dated 16th January, 2004 (Annexure 17 to the writ petition) and direct the Respondent No.1 to forthwith release Current Account Nos. 28430 and DRCs Account Nos. 7538 to 7541 with the Union Bank of India, Banda Branch, Banda. As the action of the respondent in freezing the bank accounts have been set aside the petitioner shall be entitled to operate them."

42. In ***Mineral Metal Centre*** (*supra*), the Calcutta High Court following its earlier decision in ***Shakuntla Singh*** (*supra*) and the decision of the Allahabad High Court in ***Raghuram Grah Private Limited*** (supra) held that "*that there is no provision under the Act which confers power on the authority to freeze the bank account in the pending investigation*".

43. In view of the above, the impugned communication directing freezing of accounts of the petitioner is unsustainable and is, accordingly, set aside.

44. It is clarified that this would not preclude the petitioner from taking such action as is permissible under the Customs Act.

45. The petition is allowed in the above terms. The pending application also stands disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

FEBRUARY 05, 2018
MK/PKV