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

\+ W.P.(C) 9076/2018, C.M. APPL.34947/2018

ANGELIC CREATIONS THROUGH ITS PROPRIETOR SH. GAURAV AGARWAL ..... Petitioner

Through : Sh. Akhil Krishan Maggu and Sh. Rishab Nagar, Advocates.

versus

ASSISTANT COMMISSIONER OF (DRAWBACK) & ANR. ..... Respondents

Through : Sh. Harpreet Singh, Sr. Standing Counsel with Ms. Suhani Mathur, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

<u>O R D E R</u>

% 19.11.2018

1. This Court was informed at the outset by the Revenue that the drawback claim was rejected by an order dated 15.11.2018. Learned counsel for the petitioner urges that the order is erroneous.

2. This Court is of the opinion that the order is appealable and in the light of these developments, it is open to the petitioner to avail its appellate remedies. All rights of the parties to urge all arguments are reserved in case the Commissioner wishes to pass a speaking order with respect to the contentions urged on behalf of the petitioner.

3. As far as the first claim with respect to a direction to quash the respondents' order marking lien on the petitioner's account to the extent of ₹6,76,318/- is concerned, the issue appears to be covered

against the Revenue by the judgment of this Court in *S.B. International v. The Assistant Director, Directorate of Revenue Intelligence and Ors.* 2018 (361) ELT 305 (Del). The Court had held as follows:

> *"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.*
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> *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 121of the Customs Act had been passed, the Court directed that the petitioner be allowed to operate its accounts.*
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> *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."

4. This Court is of the view that since the power of the respondents flow from the same enactment, i.e. the *Customs Act, 1962*, the ratio in *S.B. International (supra)* squarely applies. Consequently, the lien marked upon the petitioner's account to the the tune of ₹6,76,318/- by communication dated 19.09.2015 is untenable. The letter dated 19.09.2015 to the concerned DCB Bank is hereby quashed. Consequently, the bank shall ensure that the amount is made available to the petitioner. All rights and contentions of the parties with respect to any further proceedings or investigation are reserved.

Order *dasti*.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

NOVEMBER 19, 2018/ajk