IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 29.08.2018

\+ W.P.(C) 7367/2016

M/S. R K IMPEX ..... Petitioner

versus

UNION OF INDIA & ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner	:Dr G. K. Sarkar, Mrs Malabika Sarkar, Mr Prashant Srivastava and Mr Deepak Mahajan, Advocates.
For the Respondents	:Mr Amit Mahajan, CGSC for UOI. Mr O. P. Gaggar and Mr Gautam Krishna Deka, Advocates for R-2. Mr Satish Aggarwal, Advocate for R-3/DRI.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition being aggrieved by the action of respondent no.3 (hereafter 'DRI') freezing her current account no. 307301010294199 maintained with respondent no.2 (Union Bank of India's Branch located at Fatehpuri, Khari Baoli, Delhi – hereafter 'UBI'). By the letter dated 19.03.2014 (hereafter 'the impugned communication'), the DRI had called upon UBI to not to permit any debit/withdrawal from the petitioner's account till further

communication. It is stated that the same was in connection with investigation of an "alleged export fraud case". UBI complied with the aforesaid request and informed the petitioner of the same by a letter dated 12.01.2015.

2. The principal controversy involved in the present case is whether the impugned communication is lawful. The petitioner alleges that the impugned communication is without authority of law and not in accordance with the provisions of the Customs Act, 1962 (hereafter 'the Customs Act').

Factual Background

3. The petitioner is a sole proprietorship concern of Smt Deepa wife of Sh Vishal Kumar. The petitioner claims to be engaged in trading business of readymade garments. It is stated that she procures readymade garments from domestic suppliers and supplies the same to various buyers including exporters. The petitioner states that during the course of business, the petitioner had supplied readymade garments to exporters including M/s Konark Exim Pvt. Ltd., M/s G.D. Mangalam Exim Pvt. Ltd., M/s Sidh Designers Pvt. Ltd., M/s Yogmaya Traders Pvt. Ltd. and M/s DSM International; the five exporters being investigated by the DRI.

4. The counter affidavit filed by the DRI indicates that the DRI had received specific information that the high value transfers had been received in the bank account of certain traders/vendors from five Delhi based exporters. The petitioner was one of the recipients of such high

value transfers. In connection with the investigation, the DRI had issued summons to the petitioner for submission of sale and purchase invoices. It is stated by the DRI that one Sh Gopal Sharma had appeared on behalf of the petitioner and had claimed that he was the actual controller of the petitioner and several other trading firms. His statement was recorded under Section 108 of the Customs Act. The DRI claims that in his statement, Gopal Sharma had admitted that he had opened bank accounts of seven concerns with UBI including the bank account of the petitioner and he also operated the said accounts by obtaining signatures of the account holders as and when necessary.

5. It is stated that summons were also issued to Smt Deepa, the proprietor of R.K Impex; however, she did not appear before the concerned officer. The DRI further states that the investigations had revealed that the firms operated by Sh Gopal Sharma had remitted funds into the accounts of various other entities, which were dealing in diamonds and were booked for sending foreign exchanges on the basis of forged bills of entry to several entities outside India. These entities had in turn remitted amounts to the five exporters being investigated by the DRI.

6. It is in the aforesaid context that the DRI had issued the impugned communication for freezing the petitioner's bank account maintained with UBI.

7. Mr Aggrawal, learned counsel, who appeared for the DRI was unable to point out any provision of law in exercise of which the DRI

sent the impugned communication. He, however, contended that the DRI was investigating the case of fraudulent exports and, therefore, a blanket order permitting the petitioner to operate the account ought not to be granted. He submitted that in the facts of the present case, the petitioner could be permitted to operate the bank account subject to providing adequate security. He relied upon the decision of the Supreme Court in ***Commissioner of Customs v. Euroasia Global***: ***(2009) 6 SCC 58*** in support of his contention that the funds lying in the bank account of the petitioner should be permitted to be withdrawn against a bank guarantee. He also relied upon the decision of a Division Bench of this Court in ***Ravi Crop. Science v. UOI & Ors.*** : ***LPA No. 136/2014***, ***decided on 23.04.2015*** in support of his contention that the DRI was well within its jurisdiction to issue the impugned communication for freezing the petitioner's account.

Reasons and Conclusion

8. This Court is informed that the investigations are complete and the DRI has already issued a show cause notice in respect of the investigation conducted in the case of the five exporting firms – namely, M/s Konark Exim Pvt. Ltd., M/s G.D. Mangalam Exim Pvt. Ltd., M/s Sidh Designers Pvt. Ltd., M/s Yogmaya Traders Pvt. Ltd. and M/s DSM International – calling upon the noticees to, *inter alia*, show cause as to why penalty should not be imposed. Concededly, the petitioner is not one of the noticees. However, Mr Aggarwal contended that Sh Gopal Sharma was a controller of seven domestic firms including the petitioner and he has been arrayed as a noticee.

9. A plain reading of the show cause notice – a copy of which was handed over to the Court during the course of the arguments – indicates that Sh Gopal Sharma has been called upon to show cause as to why penalty under Section 114 (iii) of the Customs Act should not be imposed on him for having abetted fraudulent export of goods by the aforementioned five exporters resulting in incorrect availment of Drawback and Duty scripts under the Focus Product Scheme.

10. Plainly, the said show cause notice cannot result in any adverse order against Smt Deepa (the sole proprietor of R.K. Impex) as she is not one of the noticees. The impugned communication is in the nature of an *ad interim* measure; therefore, it is difficult to understand its purpose as, admittedly, no proceedings have been commenced against the petitioner.

11. Having stated above, the principal question that still looms large is whether the impugned communication is founded on any statutory provision.

12. The Customs Act includes provisions regarding search, seizure and arrest. Section 105 of the Customs Act empowers specified officers to search premises provided there is reason to believe that any goods are liable for confiscation or any documents or things which would be useful or relevant to any proceedings under the Customs Act are secreted at such premises. Section 110 of the Customs Act expressly provides for seizure of goods, documents and things where a proper officer has the reason to believe that such goods are liable for

confiscation. Section 105 and Section 110 of the Customs Act are set out below:-

"**105. Power to Search Premises**.—

(1) If the Assistant Commissioner of Customs, or in any area adjoining the land frontier or 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 authorise any officer of customs to search or may himself search for such goods, documents or things.

(2) The provisions of the 145 Code of Criminal Procedure, 1898 (5 of 1898), relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if the word "Magistrate", wherever it occurs, the words Commissioner of Customs were substituted.

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.

(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 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."

13. Plainly, the impugned communication has not been issued in exercise of any of the aforesaid provisions. In ***S.B. International v. The Assistant Director, Directorate of Revenue Intelligence and Ors.*** : ***W.P. (C) 237/2018***, ***decided on 05.02.2018***, this Court had rejected the contention that such orders for freezing the bank accounts could be issued by the DRI under Section 102 of the Code of Criminal Procedure, 1973.

14. In the aforesaid view, this Court is unable to sustain the impugned communication as the same is without the authority of law.

15. The reliance placed by Mr Aggarwal on the decision of the Supreme Court in ***Commissioner of Customs v. Euroasia Global*** (*supra*) is misplaced. In the said case, it was alleged that one Sh Sangit Aggarwal was indulging in fraudulent imports of PVC Cloth by misdeclaration of its value. His offices and residential premises were searched and a sum of ₹23.90 lakhs was recovered. The said amount

was seized under Section 110 of the Customs Act on the belief that the said currency was liable for confiscation as it represented sale proceeds of smuggled goods. In the aforesaid context, the principal controversy before the Court was whether misdeclaration of the description and value of the goods in question would constitute "*smuggling*". The High Court had directed unconditional release of cash. However, the Supreme Court was, *prima facie*, of the view that before adjudication, the High Court ought not to have granted unconditional release and, therefore, directed release of the seized currency against a bank guarantee. In the present case, concededly, the impugned communication has not been passed under Section 110 of the Customs Act. Further, any seizure under Section 110 of the Customs Act is also required to be followed by an adjudication under Section 122 of the Customs Act, which requires a prior show cause notice under Section 124 of the Customs Act. Concededly, no such proceedings have been commenced against the petitioner. In this view, the decision of the Supreme Court in ***Commissioner of Customs v. Euroasia Global*** (*supra*) is of little assistance to the respondents.

16. The decision in the case of ***Ravi Crop. Science v. UOI & Ors.*** (*supra*) is equally inapplicable in the facts of the present case. In that case, the bank accounts of the appellant were frozen on an allegation that the same were sale proceeds of smuggled goods which were liable for confiscation under Section 121 of the Customs Act. The Court noted that a show cause notice to the said effect had already been issued, which was pending adjudication. Further, the appellant also

failed to explain the source of the imported goods, the sale proceeds of which were credited into the bank account that has been frozen by the DRI. As noticed above, there is no allegation that the amount lying credited to the bank account of the petitioner is liable to be confiscated as no notice in this regard has also been issued. It is also relevant to note that the Division Bench also declined to render any interpretation of Section 110 and Section 121 of the Customs Act.

17. In view of the above, the petition is allowed. The impugned communication is set aside and UBI is directed to ignore the same. It is, however, clarified that this would not preclude the DRI or any other authority from initiating any action or any proceedings or taking any action in accordance with law.

VIBHU BAKHRU, J

AUGUST 29, 2018

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