IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 12024 OF 2018

Hinal Impex LLP	..	Petitioner.
v/s.		
Union of India & Others	..	Respondents.

Mr. P. D. Jain i/b. P. D. Jain & Co., for the Petitioner.
Mr. Pradeep S. Jetly, for the Respondents.

CORAM: M.S.SANKLECHA, &
M.S.SONAK, JJ.

DATE : 14th JUNE, 2019.

P.C:-

At the request of the parties, Petition is taken up for final disposal at the stage of admission. This is an issue involved is within narrow compass.

2 On 23rd October, 2018, we passed the following order:-

> " *Mr. Jain, the learned counsel in support of the Petition states that the Respondents have been served. None appears despite service.*
>
> *2 This Petition under Article 226 of the Constitution of India seeks vacating the attachment of Bank Accounts by the Respondents – Directorate of Bank Accounts Intelligence since 1 August 2018. This attachment of Bank Accounts has been done at the stage of investigation and even prior to the issue of a show cause notice. It is submitted that the same is contrary to the binding decisions of this Court in the case of Rajendra V. Shinde Vs. Union of India 2016 (332) ELT 669 an Rajuram Purohit Vs. Union of India (Writ Petition No.3270 of 2018 decided on 26 March 2018). It is submitted that this attachment of Bank Accounts causes prejudice as it is impossible to do business and earn livelihood.*

> *3 The Respondents are not represented despite service. However, we find that the service was completed only yesterday, even though circulation for today was granted as far back as 6th October, 2018. We, therefore, adjourn the Petition to 29th October, 2018. The Petitioner would also serve a copy of this order upon the Respondents by 25th October, 2018. Thus, the Respondents are put to notice that the Petition itself may be disposed of finally on the next date and no adjournment would be granted on the next date.*
>
> *4 We give one more opportunity to the Respondents to represent themselves as this Petition deserves disposal at the stage of admission.*
>
> *5 Writ Petition is adjourned to 29th October, 2018. The Petitioner is directed to serve a copy of this order upon the Respondents by 25th October, 2018 and file Affidavit of Service by the next date of the service of the Petition and this order."*

3 Today, when the matter reached, the Respondent is represented by Mr. Jetly.

4 This Petition under Article 226 of the Constitution of India, seeks quashing of the communication dated 1st August, 2018 issued by the Respondent No.2 – Dy. Director Directives of Revenue Intelligence (DRE) i.e. Respondent No.3. The impugned communication prohibits the Petitioner from operating its accounts with the Respondent No.3- Bank.

5 Petitioner is engaged in the business of import and export of rough and polished diamonds. The Petitioner had filed two bills of entry of 23rd July, 2017, seeking to export rough diamonds. However, the clearance of the same was not allowed, as the Respondent were of the view that there was an evasion of customs duty and the bills of entry were

kept pending. Besides, the export consignment continued in the possession of the Respondent – DRI. Consequently, Respondent No.2 on 1st August, 2018, issued the impugned communication to the Petitioner's bankers restraining the Petitioner from operating its account with Respondent No.3- Bank.

6 The Revenue has now filed an affidavit of reply of Respondent No.2. In the affidavit, it has been brought on record that by a letter dated 8th November, 2018, a debit freeze with the Respondent No.3 is now restricted only to Rs.1.04,765/- lakhs under Section 110 read with Section 121 of the Act. Thus, the impugned communication dated 1st August, 2018 stands modified to the above extent by letter dated 8th November, 2018.

7 Mr. Jain, learned Counsel appearing for the Petitioner points out that after 1st August, 2018 attachment/ debit freeze of the Petitioner Account with Respondent No.3-Bank, no show cause notice has been issued till today in respect of two consignments or in respect of any other issue relating to the Petitioner under the Customs Act. It is submitted that, this continued freezing/attachment of the Petitioner's account makes doing of business difficult/ impossible and the same is, in any event, without jurisdiction. It is further submitted that this issue is no longer res integra as it stands concluded by the decision of this Court in Rajendra Shinde (supra) and Rajaram Purohit (supra). Thus, the impugned notice dated 1st August, 2018 as modified by letter dated 8th August, 2018 attaching Petitioner's bank account should be quashed and set aside.

8 Mr. Jetly, learned Counsel appearing on behalf of the

Respondent submits that the impugned notice dated 1st August, 2018 is now modified by a communication dated 8th November, 2018 and the attachment restricted only to the extent of Rs.1,04,765/- lying with the Petitioner's bank account with Respondent No.3. It is submitted that the amounts lying in the bank accounts are possibly sale proceeds of smuggled goods and, therefore, liable for the confiscation. In the above view, he submits no interference is warranted. Across the bar, Mr. Jetly submits a copy of the letter dated 8th August, 2018, modifying the impugned communication dated 1st August, 2018. The same is taken on record.

9 We find that, the issue raised herein stands concluded by the decision of this Court in Rajen Shinde (supra) and Rajaram Purohit (supra). In fact, in the case of Rajuram Purohit (supra), an identical submission as made before us by the Revenue, was made and after taking into account the submission, this Court has observed as under:-

> " *We have noticed in this case that mere allegations have resulted in a drastic action. There are allegations against the petitioner of having smuggled gold bars into India. It is alleged that by ostensibly carrying on air-conditioners' and television sets' trading activity, the petitioner together with Amrut Purohit is regularly smuggling the goods bars by concealing them in air-conditioners. If it is a serious allegations and made on oath before us, then, least we expected that by now a show cause notice to be issued, the petitioner's reply called for, an opportunity of personal hearing and an order of adjudication. Leave alone any adjudication order till date, no show cause notice is also issued to the Petitioner. The Revenue prays for time to issue such a notice. We do not see how in these circumstances the Revenue justifies this act and prayed that bank account may be continued under attachment and then within a time frame show cause notice will be issued. We do not see how we can freeze a bank account or not allow the petitioner to deal with it until the show cause notice is*

issued and final orders are passed thereon. That would mean we secure for the Revenue, the amount due and payable which is yet to be adjudicated upon by Revenue. In these circumstances and going by factual allegations, that we do not think that the impugned communication can be sustained.

We accordingly quash and set the impugned communication of bank. The writ petition is allowed with no order as to costs. We, however, clarify that our order does not mean that Revenue cannot proceed to recover the amount from the petitioner as also attach the bank account in future. All such actions can be taken strictly in accordance with law."

10 Similarly, in Rajen Shinde (supra), the Court observed that notwithstanding the seriousness of the allegations made by the Revenue, the attachment of the Petitioner's bank account will bring to halt the Petitioner business. The Court did not disturb the attachment of the immovable properties pending adjudication. Similarly in this case, we are only quashing the impugned notice dated 1st August, 2018 as modified by letter dated 8th August, 2018. We are not disturbing any other seizure made under Section 110 of the Customs Act, 1962 to protect the interest of the Revenue.

11 In the above view, we quash and set aside the impugned notice dated 1st August, 2018 as modified by further communication dated 18th September, 2018 by the office of Respondent No.2.

12 **Petition disposed of** in the above terms.

(M.S.SONAK,J.) **(M.S.SANKLECHA,J.)**