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

Decided on: 24th April, 2019

\+ **W.P.(C) 2417/2019**

M/S CAMRON EXPORTS ..... Petitioner

versus

COMMISSIONER OF CUSTOMS INLAND CONTAINER DEPOT & ORS. ..... Respondents

\+ **W.P.(C) 2523/2019**

ELEGANT EXPORTS ..... Petitioner

versus

COMMISSIONER OF CUSTOMS, INLAND CONTAINER DEPOT & ORS. ..... Respondents

Present: Mr.Akhil Krishan Maggu & Mr.Rishab Nagar, Advocates for the Petitioners.

Mr.Harpreet Singh, Sr.Std.Counsel with Ms.Suhani Mathur, Advocate for the Respondents.

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

S. RAVINDRA BHAT, J. (OPEN COURT)

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1. Issue notice. Mr.Harpreet Singh, Senior Standing Counsel accepts notice.

2. The petitioner states that his bank accounts have been frozen [ICICI Bank Account No. 25005500904 & IndusInd Bank Account No.201002412697].

3. The facts are that the respondent/Customs Authorities issued notices on 06.02.2019, to enquire into allegations of bogus addresses for the

purposes of claiming IGST refunds. The petitioner relies upon the judgment of this Court in *S.B. International vs. The Assistant Director, Directorate of Revenue Intelligence & Ors.,* (2018) 361 ELT 305 (Del.). In that judgment the Court, after considering the provisions of the Customs Act and other similar enactments, held that the power to freeze or suspend operations of a bank account cannot legally be exercised. The judgment in *S.B. International* (supra) states as follows:

> *"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.*
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> *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.*
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> *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 121of 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."

4. In the present case, the impugned notices dated 06.02.2019 are, in effect, identical with that made in *S.B. International* (supra). They cannot be allowed to stand; they are hereby quashed and set aside.

5. At the same time, the writ petitioner is directed to join the investigation proceedings. He shall furnish an undertaking to this effect in this Court, within a week by way of an affidavit, with a copy to the learned Standing Counsel for the Customs authorities. The writ petitions are allowed in the above terms.

6. Copy of the order be given *dasti*.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

APRIL 24, 2019
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