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

+ **W.P.(C) 3989/2019 & CM APPL. 18081/2019**

REACH INFOCOM TECHNOLOGY PRIVATE
LIMITED

..... Petitioner

Through Mr Rajesh Yadav, Ms Sonia Dube,
Mr Saurabh Seth, Mr S. Chakraborty, Ms Surbhi
Anand, Advocates.

versus

UNION OF INDIA & ANR

..... Respondents

Through Mr Amit Mahajan, CGSC with
Mr Apoorv Singhal, Advocates for UOI.
Mr Satish Aggarwala, Standing Counsel for UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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23.04.2019

1. The present petition was listed today for the limited purpose of examining the question whether a notification, declaring the officers of DRI as proper officers, has been issued. All other contentions advanced by the petitioner were considered and dealt with in the order passed yesterday (i.e. 22.04.2019). The same is extracted below:-

“ 1. The petitioner has filed the present petition, *inter alia*, praying as under:-

“(a) issue a writ of certiorari or any other appropriate writ, order or direction in the nature thereof, thereby quashing the entire proceedings against the Petitioner, initiated vide DRI F.No.

DRI/DZU/23/lnt/08/2019.

(b) issue a writ of certiorari or any other appropriate writ, order or direction in the nature thereof, thereby quashing the Panchnama dated 15.03.2019, drawn at Ground Floor and First Floor, D-33, Sector-2, Noida, Uttar Pradesh (Annexure P-2);

(c) issue a writ of certiorari or any other appropriate writ, order or direction in the nature thereof, thereby quashing the Panchnama dated 15.03.2019, drawn at A-13, Sector-83, Noida, Uttar Pradesh (Annexure P-3);

(d) issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof, thereby directing the Respondents to immediately release the goods detained/seized vide Panchnamas dated 15.03.2019 and the goods, documents, files, computer hardware and software, mobile phone, laptops etc. which are mentioned in annexure a, i.e. the goods and documents stated to be tendered by Shri Mintu Saha, on 16.03.2019 (Annexure P-5);

(e) issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof, thereby directing the Respondents to interrogate the directors, promoters, officials and employees of the Petitioner Company, within the office hours with usual breaks in between, in presence of their Advocate and further direct the Respondents to permit the said persons to have water, tea and food during such interrogation and not to subject them to any torture;”

2. Insofar as the petitioner’s prayer that directions be issued to the respondent to interrogate the directors, promoters, officials and employees of the petitioner company within office

hours is concerned, Mr Aggarwala, learned counsel appearing for the respondents, states that there would be no difficulty in ensuring that the statements of the directors and officials are recorded during office hours. He also states that the same can be done in the presence of an advocate, although the advocate would not be permitted to intercede or interfere in the said proceedings.

3. The respondents are bound down to the said statement, and no further orders are required to be passed in relation to the aforesaid prayer.

4. The petitioner has also challenged the search and seizure proceedings, principally, on two grounds. First, it is contended that the officers of the DRI are not proper officers within the meaning of Section 2(34) of the Customs Act, 1962. Second, it is contended that the concerned officers had no reason to believe that any goods imported by the petitioner are liable for confiscation or seizure, under the Customs Act, 1962. In addition to the above, the petitioner also states that the goods have been seized in relation to the investigation relating to goods imported during the period from 01.04.2014 to 30.06.2017. He states that notwithstanding the limited scope of the investigation, the respondents have seized goods (mobile phones and other products) which were imported after 30.06.2017. The petitioner is also aggrieved by the seizure of the files, laptops, computers and hard disks, which, according to the petitioner, are essential for conducting its business.

5. Insofar as the petitioner's contention with regard to the respondents having no reason to believe that the goods are liable for confiscation is concerned, it is stated that the necessary reasons have been duly recorded in the file. Mr Aggrawala, also submitted that the principal allegation against the petitioner is that the petitioner had imported goods by furnishing incorrect maximum retail prices (MRPs) in respect of the goods and, therefore, are evading the countervailing duty payable on the same. He also confirms that there is sufficient material to support the said reasons to believe the same.

6. It is well settled that this Court in proceedings under Article 226 of the Constitution of India, will not examine the sufficiency of the reasons for believing as recorded, and therefore no interference is warranted by this Court in this regard in the present proceedings.

7. Mr Aggrawala also disputes the contention that the officers of the DRI are not proper officers. He states that a notification in this regard has already been issued and, therefore, the petitioner's challenge on this ground is unmerited. He seeks time to produce the said notification.

8. Insofar as the seizure of the goods (mobile phones and other products) imported by the petitioner after 30.06.2017 is concerned, Mr Aggrawala states, on instructions, that all the goods imported post that period shall be released to the petitioner. In view of the statement, the petitioner's grievance in this regard also stands addressed.

9. Insofar as the petitioner's grievance regarding seizure of hard disks, computers and files is concerned, Mr Aggrawala states that a copy of the hard disks and relevant data have already been provided to the petitioner. He further states that the respondent will also provide an image of the hard disks and the data available in the computers to the petitioner, in order to ensure that the petitioner's business does not suffer for want of records. The respondent is bound down to the said statement. The image (clone) of the hard disks be provided to the petitioner, within a period of three weeks from today. The respondent shall also provide the photocopies of the documents seized by them within the said period.

10. Mr Aggrawala states that the summons for recording the statement under Section 108 of the Customs Act, 1962, has already been issued to Mr Sunil Kumar Patwari. The petitioner shall ensure that Mr Patwari is available in the office of the concerned authorities for recording his statement. He shall also cooperate with the authorities in unlocking the computers and the mobile phone, in order to enable the concerned authorities to

retrieve the data.

11. List on 23.04.2019, limited to the extent of examining the question, whether a notification declaring the officers of the DRI as proper officers has been issued.”

2. Mr Aggarwala has now produced a notification dated 02.05.2012 (Notification No. 40/2012-Customs (N.T.) issued by the Government of India, Ministry of Finance (Department of Revenue). The same indicates that Intelligence Officer in the Directorate General of Revenue Intelligence and Directorate General of Central Excise Intelligence have also been charged with the functions under sub-section (1) and (3) of Section 110 of the Customs Act, 1962.

3. In this view, the petitioner’s contention that officers of DRI are not proper officers within the meaning of Section 2(34) of the Customs Act, 1962 is not sustainable.

4. The petition and the pending application are disposed of.

5. Order *dasti* under signature of the Court Master.

VIBHU BAKHRU, J

APRIL 23, 2019

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