IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2677 OF 2020

Samyak Jewels Pvt. Ltd. ... Petitioner
V/s.
Union of India and ors. ... Respondents

Mr.Brijesh Pathak, Advocate for the Petitioner.
Mr.Pradeep S. Jetly, Senior Advocate with Mr.Jitendra B. Mishra, Advocate for Respondent Nos.1,2 and 3.

CORAM : UJJAL BHUYAN &
ABHAY AHUJA, JJ.
DATE : SEPTEMBER 25, 2020

P.C.:-

1. Heard Mr.Pathak, learned counsel for the petitioner; and Mr.Jetly, learned senior counsel alongwith Mr.Mishra, learned counsel for respondent Nos.1, 2 and 3.

2. Challenge made in this writ petition is to the communication dated 19th April, 2018 of the Directorate of Revenue Intelligence to the Branch Manager, IndusInd Bank, Sangam Complex, Ground Floor, Off Mirza Ismail Road requesting the bank authority not to allow any debit transaction including ATM withdrawal and internet banking from the account of the petitioner bearing No.200000097615 until further orders.

3. According to the petitioner, he is carrying on the business of trading in precious stones including in rough and coloured diamonds. All statutory dues have been paid. There is no demand on dues outstanding against any statutory authority. It is stated that petitioner and its directors enjoy very good reputation in the business. It is having a current account in IndusInd Bank, Opera House Branch, Girgaon, Mumbai bearing No.200000097615. By letter dated 19th April, 2018, the bank authorities were requested by respondent No.2 to provide upto date account statement of the said account, further requesting not to allow any debit transaction including ATM withdrawal and internet banking from the said account. It was mentioned that the information was sought for under Section 108 of the Customs Act, 1962 (Customs Act). It is contended that such freezing of bank account was without any notice to the petitioner.

4. While learned counsel for the petitioner submits that attachment of the bank account has continued beyond the statutorily permissible period and therefore should be interfered with, Mr.Jetly submits that at the relevant point of time such attachment was considered necessary and therefore the bank account was attached.

5. We have considered the submissions made and perused the materials on record.

6. Though in the letter dated 19th April, 2018, it was mentioned that the information was sought for under Section

108 of the Customs Act, a perusal of the said provision would show that it does not provide for attachment of any bank account. On the other hand, we find that Section 110 of the Customs Act deals with seizure of goods, documents and things. Sub-section (5) was inserted in the said provision by the Finance (No.2) Act, 2019 with effect from 1st August, 2019. Sub-section (5) reads as under :-

> "Where the proper officer, during any proceedings under the Act, is of the opinion that for the purposes of protecting the interest of revenue or preventing smuggling, it is necessary so to do, he may, with the approval of the Principal Commissioner of Customs or Commissioner of Customs, by order in writing provisionally attach any bank account for a period not exceeding six months.
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> Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform such extension of time to the person whose bank account is provisionally attached, before the expiry of the period so specified."

7. This aspect of the matter was gone into by this court in a recent decision in Writ Petition (St.) Nos.5669 of 2020 and other connected cases, decided on September 22, 2020. It has been held thus :-

> " 29. From the above it is evident that the said provision was inserted in the statute with effect from 1st August, 2019. Besides, from the tone and tenor of the sub-section it is apparent that it is not a procedural provision *per se*; rather it is coercive in nature, though the procedure is also laid down for giving effect to the said provision.

Being a coercive provision, there has to be strict compliance to the procedure laid down. In such circumstances and having regard to its very nature, such a provision can only have prospective operation and not retrospective operation. Infact, the concerned Finance Act makes it explicit by making the provision effective from a prospective date i.e. from 1st August, 2019.

30. Letter from the office of the Principal Commissioner of Customs to the Branch Manager of IDFC Bank was issued on 1st March, 2019 for freezing of the bank account of the petitioner. This was prior to insertion of sub-section (5) in Section 110 with effect from 1st August, 2019. Therefore, it is quite clear that this provision could not have been invoked for freezing the bank account of the petitioner.

31. Even otherwise, we find that the above provision can only be invoked in the manner provided therein which can be culled out as under :-

(i) The order of attaching the bank account provisionally shall be passed in writing by a proper officer;

(ii) Such an order can be passed during any proceedings under the Customs Act;

(iii) Before passing such an order the proper officer must form an opinion that such attachment of bank account is necessary for the purposes of protecting the interest of revenue or for preventing smuggling;

(iv) Before passing such an order the proper officer must obtain prior approval of the Principal Commissioner of Customs or of Commissioner of Customs; and

(v) Such provisional attachment shall be for a period not exceeding six months.

32. As per the proviso the Principal Commissioner of Customs or Commissioner of Customs can extend such provisional attachment for a further period not exceeding six months; but he must record reasons for such extension and such extension of period has to be informed to the person whose bank account is provisionally

> attached before expiry of the period so specified.
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> 33. Thus from a careful reading of sub-section (5) of Section 110 it is noticeable that several pre-conditions and procedures are mandated. It may not be necessary for an elaborate deliberation of the same in view of the fact that respondents in their affidavit have not placed on record any order passed by the Principal Commissioner of Customs or Commissioner of Customs under sub-section (5) of Section 110. Suffice it to say that an order in writing for provisional attachment of a bank account is a must before such an account can be attached. In the absence of such an order in writing respondents could not have provisionally attached the bank account of the petitioner and continued with such attachment even beyond the permissible extended period.
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> 34. Learned counsel for the respondents could not show any other provision in the Customs Act which empowers or authorizes the customs department to freeze the bank account of a person other than sub-section (5) of Section 110. Such attachment of bank account of the petitioner on 1st March, 2019 and its continuation thereafter being in breach of Section 110(5) is therefore, without any authority of law."

8. Following the above, we do not find any good reason to sustain the communication dated 19th April, 2018 as more than two years have elapsed since the bank account was frozen. We may mention that sub-section (5) of Section 110 speaks of provisional attachment. Dictionary meaning of provisional is 'arranged or existing for the present, possibly to be changed later'; Black's Law Dictionary, Eight Edition, has defined it as 'temporary or conditional'. Therefore, the statute has provided a definite time line beyond which the attachment becomes bad in law.

9. Consequently, the impugned communication dated 19^{th} April, 2018 is hereby set aside and quashed. Respondents are directed to allow petitioner to operate its bank account No.200000097615 with IndusInd Bank.

10. Writ petition is accordingly allowed but without any order as to costs.

11. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(ABHAY AHUJA, J.) **(UJJAL BHUYAN, J.)**

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