IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2867 OF 2019

Sai Enterprise through its sole proprietor
Nanank Motumal Pherwani … Petitioner
Vs.
Union of India and others … Respondents

Mr. Suryanarayanan Iyer i/b. Mr. Dhiren Akbari for Petitioner.
Mr. Pradeep S. Jetly, Senior Advocate a/w. Mr. J. B. Mishra for Respondents.

CORAM : UJJAL BHUYAN &
ABHAY AHUJA, JJ.

DATE : SEPTEMBER 10, 2020

P.C. :

Heard Mr. Suryanarayanan Iyer, learned counsel for the petitioner and Mr. Jetly, learned senior counsel for the respondents.

2. By filing this petition under Articles 226 / 227 of the Constitution of India, petitioner seeks a direction to the respondents to unfreeze its bank account bearing Current Account No.37846915300 with State Bank of India, Chowk Bazar Branch, Surat.

3. Bank account was frozen on 07.12.2018 on instructions of respondent Nos.2 and 3. It is stated that petitioner is engaged in cheque discounting business only. It is not engaged in any export or export related business directly or indirectly. For no apparent reason the bank account was frozen.

4. In their affidavit, respondent Nos.2 and 3 have stated that investigations revealed that an amount of Rs.19,96,600.00 representing illegally availed Integrated Goods and Services Tax (IGST) refund of an exporter was deposited in the bank account of the petitioner. Therefore, the bank authority was requested to freeze the bank account of the petitioner in exercise of powers under section 110(5) of the Customs

Act, 1962 in order to safeguard government revenue. Summons were issued to the petitioner to explain the relationship with the exporter M/s. Maa Durga Impex and the bank transaction.

5. In view of the very fair submission made by Mr. Jetly that considering the legal position the bank account may be unfrozen, it may not be necessary for a detailed narration of facts and examination of the related legal issues.

6. Suffice it to say that in the proceedings held on 25.02.2020, this Court had passed the following order:

> "Affidavit in reply is tendered in the Court today. In the Affidavit in reply, the Respondents have relied upon Section 110(5) of the Customs Act, 1962. The Section 110(5) of the Customs Act empowers proper officer to provisionally attach bank account during any proceedings under the Act. Learned Senior Advocate for the Respondents seeks time to place on record the decisions in support of the contention that a contemplated show cause is a proceeding under the Section 110(5) of the Act.
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> 2. At his request, stand over to 12 March 2020. To be listed at the bottom of the admission board."

7. From the above, it is evident that stand taken by the respondents was that the bank account was frozen in exercise of powers under section 110(5) of the Customs Act, 1962 (briefly 'the Customs Act' hereinafter). We find that this provision was inserted in the Customs Act by the Finance (No.2) Act, 2019 with effect from 01.08.2019. Sub-section (5) of section 110 is extracted hereunder:

> "**110. Seizure of goods, documents and things.-**
> (1) to (4) …
> (5) 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:
>
> 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.”

8. Evidently, the action of freezing the bank account i.e., on 07.12.2018 was undertaken prior to insertion of the aforesaid provision w.e.f. 01.08.2019. *Prima-facie* this provision may not be applicable to the case of the petitioner. Additionally, as per the condition mentioned in sub-section (5) of section 110, the initial period of freezing the bank account i.e., not exceeding six months has expired long back. That apart, even if as per the proviso such period was extended by the Principal Commissioner of Customs or Commissioner of Customs for a further period not exceeding six months, that extended period has also elapsed. In such circumstances, continuing with the freezing of the bank account of the petitioner would be oppressive and without any sanction of law.

9. Consequently, we direct the respondents, more particularly respondent Nos.2 and 3, to forthwith unfreeze the seized bank account of the petitioner bearing Current Account No.37846915300 with State Bank of India, Chowk Bazar Branch, Surat.

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

11. This order will be digitally signed by the Private Secretary 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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