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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5006 OF 2021
WITH
INTERIM APPLICATION NO. 2166 OF 2021

Kaka Overseas Ltd. …Petitioner
vs.
1.Union of India, through the Secretary, Ministry of Law and Justice, Dept. of Legal Affairs
2.Directorate of Revenue Intelligence Mumbai Zonal Unit
3.Commissioner of Customs (Export) NS-I …Respondents

WITH
WRIT PETITION NO. 5008 OF 2021
WITH
INTERIM APPLICATION NO. 2167 OF 2021

Rugsotic Pvt.Ltd.. …Petitioner
vs.
1.Union of India, through the Secretary, Ministry of Law and Justice, Dept. of Legal Affairs
2.Directorate of Revenue Intelligence Mumbai Zonal Unit
3.Commissioner of Customs (Export) NS-I …Respondents

WITH
WRIT PETITION NO. 5011 OF 2021
WITH
INTERIM APPLICATION NO. 2168 OF 2021

M/s.Rugsotic, through its proprietor Nitesh Kumar Roy. ...Petitioner
vs.
1.Union of India, through the Secretary, Ministry of Law and Justice, Dept. of Legal Affairs
2.Directorate of Revenue Intelligence Mumbai Zonal Unit
3.Commissioner of Customs (Export) NS-I …Respondents

Dr. Sujay Kantawala a/w. Mr. Anupam Dighe, Ms. Chandni Tanna with Ms.Shrushti Relekar i/b. India Law Alliance for the petitioners.

Mr. Pradeep Jetly, Senior Advocate a/w. Mr. Jitendra B. Mishra for the respondents/UOI.

CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.

DATE :- SEPTEMBER 22, 2021

PC :-

1. The petitioners alongwith its group firms are manufacturers and exporters of silk fabrics, different kinds of woollen and silk carpets. The common grievance of the petitioners in these petitions is of respondent no.2-Directorate of Revenue Intelligence, Mumbai Zonal Unit, withholding the clearance of the petitioners' silk fabrics, woollen and silk carpets etc. covered under various shipping bills as set out in each of these petitions.

2. It is the petitioners' case that they had filed shipping bills, the details of which are set out in each of these petitions, which were duly examined by the Customs authorities as also on their due verification, export orders were issued. The petitioners had accordingly generated invoices, upon receiving such orders, and dispatched the export goods from the petitioners' factory and transported them to the Container Freight Station (for short '**CFS**') where the goods were stuffed after due examination by the Customs authorities. The goods in question were already dispatched at the CFS where necessary examination, stuffing and sealing procedures were carried out.

3. The petitioners have contended that at such point of time on December 7, 2020, the officers of respondent no.2 visited the petitioners’ factory premises at Bhadohi which is the branch office of the petitioners as well as the residential premises of the directors/proprietors, and carried out an extensive search. A panchanama of the factory premises/ branch office of the petitioners was also drawn. It is stated that during the said search, the officers of respondent no.2 retained certain materials, which according to the petitioners, was found in the drawer of the proprietor’s wife as also cash of Rs.32,00,000/-, despite the petitioners providing documentary evidence of withdrawals of such amount. On the same day, respondent no.2 by a handwritten communication addressed to the CFS informed that the export consignment of the petitioners be held up with a direction not to allow any amendment in cargo declaration. Also statements of Mr.Niteesh Kumar Roy, one of the Directors of the petitioners, and Mr.Vikram Singh Baghel, Senior Manager, Business Development for USA Market in Get My Rugs, were recorded which according to the petitioners was done without issuing summons and which were retracted on the same day.

4. The petitioners being aggrieved by such action of respondent no.2, through their Advocates addressed a communication dated December 11, 2020 to respondent no.2, requesting respondent no.2 to release the petitioners goods under export. Such communication was not responded and hence, these petitions are filed praying for reliefs which are similar in all the petitions. The reliefs *interalia* are for a direction against the respondents not to withhold any consignment of the petitioners without giving notice to the petitioners and without seeking clarification from the petitioners or his group companies; secondly, for a writ of mandamus to withdraw the written communication dated December 7, 2020 addressed to the CFS, for unconditionally allowing clearance and export of the petitioners' goods covered under various shipping bills; to release the gadgets/equipments seized during various searches conducted at the petitioners' factory premises and residential premises; to release cash of Rs.32,00,000/- seized in the search conducted in the residential premises of the petitioners; and for issuance of detention certificate in relation to the petitioners' export goods covered under the shipping bills, and for the waiver of demurrage incurred till the release of the export goods.

5. On behalf of the respondents, reply affidavits have been filed as also replies are filed to the interim applications. The case of the respondents primarily is to the effect, that the petitioners quite contrary to their claims of being genuine exporters and of following business ethics, the group has come to the adverse notice of multiple intelligence/investigation agencies of the Government of India, for fraudulent activities involving, amongst other things, money laundering, fraudulent availment of drawback by overvaluing value of goods being attempted to be exported, etc. Respondents contend that the petitioners were accordingly subjected to search operations conducted by the Directorate of Enforcement, which investigation, revealed that the funds were transferred from the bank accounts of the petitioners' group companies into the bank accounts of many shell companies and subsequently remitted outside India. It is also the respondents' case that intelligence developed by DRI MZU, indicated that the petitioners had been exporting low quality carpets and fabric by highly overvaluing their price with the intention of fraudulently availing high rates of drawback, thereby defrauding the public exchequer. It was also noticed that about 61 shipments of the group companies were filed at the Jawaharlal Nehru Customs House (JNCH) which covered a wide description of goods, namely silk fabric/ clothing apparels and woollen carpets. These consignments which were parked at CFS were examined with respect to the declaration made in the export documents and markings on the packages/labels. Also searches were conducted at various other outlets and other places. The respondents have set out as to what was the outcome of such search operations and the entire *modus operadi* adopted on the basis of evidence as gathered. After retrieval of the evidences confirming overvaluation of the goods, the goods were put under seizure contrary to the claim of the petitioners. Also many devices and documents were seized, scrutiny of documents and forensics of devices conducted after examination of the petitioners' consignments. Be it so, there are issues on the merits of the matter.

6. The respondents have also stated that in compliance of the orders passed by this Court on December 22, 2020, the respondents have provisionally released the goods. It is also contended that the department has substantial reasons to believe that the petitioners' group companies are involved in an attempt to defraud the public exchequer. Hence, the prayers as made in the petitions be rejected.

7. We have heard Dr.Kantawala, learned Counsel for the petitioners and Mr.Jetly, learned Senior Counsel with Mr.Jitendra B. Mishra, Counsel for the respondents.

8. Dr.Kantawala, at the outset would submit that the concern of the petitioners is two fold. Firstly, he submits that despite the seizure of the goods having taken place on December 7, 2020, the respondents have not issued any show cause notice and the status of the petitioners goods is of merely a provisional release. He submits that the petitioners cannot be kept in such suspended animation for such a long period. His contention is that the investigation, if any, ought to have been completed and show cause notice issued to the petitioners. The second concern is in respect of about 53 carpets being retained by the respondents as samples for forensic purposes. It is his submission that such goods could not be retained by the respondents and the same should have been unconditionally returned to the petitioners. According to him, these are "goods" as defined under Section 2(22)(e) of the Customs Act which are retained as samples for forensic purposes and hence would not have the character of seized goods, hence they would be required to be returned back to the petitioners within six months as per the provisions of Section 110(2) of the Customs Act. On the other hand, the respondents case is of detaining these goods for forensic purposes.

9. In so far as the first question is concerned, admittedly the seizure of the goods had taken place on December 7, 2020, as also the goods of the petitioners except the cash and the samples, are provisionally released. Mr.Jetly has submitted that the investigation is also at a final stage and that show cause notices would now be issued before December 6, 2021, the period of six months having been extended. In these circumstances, we are of the opinion that the respondents ought to be permitted to adopt the further course of action of issuance of show cause notices to the petitioners on or before December 6, 2021. Dr.Kantawala would also have no objection for such course of action to be adopted. Of course as to what has happened in the interregnum shall be subject to the outcome of any adjudication of the proceedings on the show cause notice.

10. The second question whether detaining of the 53 carpets as samples for forensic purposes can continue indefinitely, would be required to be answered considering the provisions of Section 105, Section 110 read with Section 124 and Section 2(22) of the Act. These provisions are required to be noted which read thus:-

> "**105 Power to search premises**
> (1) If the Assistant Commissioner of Customs or Deputy Commissioner of Customs, or in any area adjoining the land frontier or the coast of India an officer of customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation, or any documents or things, which I his opinion will be useful for or relevant to any proceeding under this Act, are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents or things.
>
> (2) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words Principal Commissioner of Customs or Commissioner of Customs were substituted.
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> … .. .. … ..
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> **110. Seizure of goods, documents and things**
> (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

[PROVIDED that where it is not practicable to remove, transport, store or take physical possession of the seized goods for any reason, the proper officer may give custody of the seized goods to the owner of the goods or the beneficial owner or any person holding himself out to be the importer, or any other person from whose custody such goods have been seized, on execution of an undertaking by such person that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

PROVIDED FURTHER that where it is not practicable to seize any such goods, the proper officer may serve an order on the owner of the goods or the beneficial owner or any person holding himself out to be importer, or any other person from whose custody such goods have been found, directing that such person shall not remove, part with, or otherwise deal with such goods except with the previous permission of such officer.]

[(1A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

(1B) Where any goods, being goods specified under sub-section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, marks, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceeding under this Act and shall make an application to a Magistrate for the purpose of—

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or

(c) allowing to draw representative samples of such goods, in the presence of the Magistrate and certifying the correctness of any list of samples so drawn.

(1C) Where an application is made under sub-section (1B), the Magistrate shall, as soon as may be, allow the application.]

[(1D) Where the goods seized under sub-section (1) is gold in any form as notified under sub-section (1A), then, the proper officer shall, instead of making an application under sub-section (1B) to the Magistrate, make such application to the Commissioner (Appeals) having jurisdiction, who shall, as soon as may be, allow the application and therefore, the proper officer shall dispose of such goods in such manner as the Central Government may determine.]

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

[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 the person from whom such goods were seized before the expiry of the period so specified:

PROVIDED FURTHER that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.]

(3) The proper officer may seize any document or thing which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4) The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs.

(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.]

124. Issue of show cause notice before confiscation of goods, etc.

No order confiscating any goods or imposing any penalty on any person shall be made under this

> Chapter unless the owner of the goods or such person —
>
> (a) is given a notice in [1][writing with the prior approval of the officer of customs not below the rank of [2][an Assistant Commissioner of Customs], informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;
>
> (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and
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> (c) is given a reasonable opportunity of being heard in the matter:
>
> PROVIDED that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral:
>
> [PROVIDED FURTHER that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.]
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> **Section 2 Definitions**
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> **(22) "goods"** includes-
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> (a) vessels, aircrafts and vehicles;
> (b) stores;
> (c) baggage;
> (d) currency and negotiable instruments; and
> (e) any other kind of movable property;"

11. From a bare reading of sub-section (1) of Section 110, it is clear that if the proper officer has reason to believe that any goods are liable to confiscation under the Act, he may seize such goods. Sub-section (2) provides that where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. By virtue of proviso below sub-section (2), the period of six months on sufficient cause being shown, can be extended by the Commissioner of Customs for a period not exceeding six months. Sub-section (3) speaks about the seizure of documents or things and ordains that the proper officer may seize any document or thing which in his opinion is useful or relevant for any proceedings under the Act. It, therefore, appears to be clear that the legislature intended to carve out some distinction between the "seized goods" as appearing in sub-sections (1) and (2) and seizure of "documents or things" as used in sub-section (3). Further Section 124(a) mandates that no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person is issued a notice in writing informing him of the grounds on which he proposes to confiscate the goods or to impose a penalty.

12. A cumulative reading of Sections 110(1) and (2) read with Section 124(a) brings about a consequence that the proper officer if has reasons to believe that goods are liable to be confiscated, he has power to seize the goods. For such purpose, he is under an obligation to give a notice in respect of such seized goods and if he has not given a notice as provided for in clause (a) of Section 124 within six months of the seizure of the goods, the goods are liable to be returned to the person from whose possession they were seized within six months [Section 110(2)], unless an extension of six months is granted on recording of reasons, by the Commissioner of Customs. Thus, in the event the goods have suffered detention beyond the period of six months without any extension being granted by the Commissioner of Customs, as per proviso to sub-section (2) of Section 110, the goods cannot be retained by the officer who has seized the goods.

13. Applying such provisions of the Act to the facts of the present case, in our opinion, the proper officer did not have any authority to retain the 53 carpets contrary to what has been provided for in sub-section (2) of Section 110. This more particularly as these carpets are retained for forensic purpose and also that the seized goods are already permitted to be provisionally released as per the provisions of Section 110A of the Act. Hence, there is no warrant to detain these goods further to the extended period which expires on 6 December 2021. Dr.Kantawala has placed reliance on the decision of the learned Single Judge of the Karnataka High Court in "**Stovekraft Pvt. Ltd. Vs. Jt. Director, Dir. Of Revenue Intelligence**"[1], in so far as it interprets the effect of Section 110 read with Section 124 of the Act. Although the issue in the said case was seizure of documents, files and electronic goods like floppies, pen drive, hard-disk etc, the same were held not to be goods within the definition of Section 2(22) of the Act and were treated as things within the meaning of Section 105 read with Section 110(3) of the Act. The distinction in the applicability of this judgment to the facts in hand is that the detained carpets formed part of the goods seized which were subsequently provisionally

1 2007(214) EL.T. 179 (Kar.)

released under Section 110A of the Act, however, part of them (53 carpets) are retained as samples. Once such goods form part of the seized goods and are not subject matter of any independent seizure for which a notice could have been issued within a period of six months, we are of the opinion that such seized goods would partake the character of goods falling in the category of "any other kind of movable property" as defined under Section 2(22)(e) of the Act, which in any case could not have been detained beyond the extended period provided for under Section 110(2) of the Act.

14. Adverting to the above legal position, in our opinion, 53 carpets which are retained as samples for forensic purpose are also required to be returned to the petitioners at the end of the extended period. Mr.Jetly would also fairly state that the department is at the final stage of investigation.

15. In the above circumstances, in our opinion, these petitions would not warrant any further adjudication. They are disposed of by the following order:-

ORDER

(I) In respect of the seized goods of the petitioners which are subject matter of a provisional release under Section 110A of the Customs Act, the respondents shall issue show cause notice(s) to the petitioners on or before December 6, 2021 which be adjudicated in accordance with law, as expeditiously as possible.

(II) The respondents shall take an appropriate decision in regard to the 53 sample carpets and the seized cash on or before December 6, 2021.

(III) All contentions in the adjudication of the show cause notice(s) are expressly kept open.

(IV) Needless to observe that in the event show cause notice(s) are not issued as directed, all consequences in law shall follow.

(IV) Disposed of in the above terms. No costs.

(V) Interim applications would not survive, they are accordingly disposed of.

(G. S. KULKARNI, J.) **(CHIEF JUSTICE)**

PRASHANT VILAS RANE

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