

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 397 OF 2023

Jay Jagdamba Ltd.

... Petitioner

V/s.

Union of India and Ors.

... Respondents

Mr. Anupam Dighe i/b. India Law Alliance for the Petitioner

Mr. Jitendra B. Mishra with Mr. Ashutosh Mishra for the
Respondents 1 to 3

Mr. Rajkumar Shukla for Respondent No.4

Mr. Bhupesh V. Samant with Tushar Pabale for Respondent No.6

Mr. Nikhil Rajani i/b. V. Deshmukh & Co. for Respondent No.8

***CORAM : NITIN JAMDAR &
ABHAY AHUJA, JJ.***

DATE : 25 JANUARY 2023

P.C. :-

The Petitioner has filed this Petition challenging the order passed by the Respondents on the provisional attachment of the Petitioner's bank account under Section 110 (5) of the Customs Act, 1962. This Petition came up on board and it was argued from time to time. On 20 January 2023, the following order came to be passed :-

“ The Petition was partly heard on 18 January 2023, wherein learned Counsel for the Petitioner had initially contended that the bank accounts which have been attached being cash credit facility, in law they could not

have been attached. To which the learned Counsel for the Respondents had contended that the Petitioner was under obligation to give correct and true answers during the investigation when called upon to give details of the bank accounts and he has not disclosed the other bank accounts.

2. Learned Counsel for the Petitioner then had contended that the Petitioner intends to resolve the issue and would meet the Commissioner. He states that the Petitioner is ready to give bank guarantee for the amounts specified in the impugned order of provisional attachment and which amount is also specified in the affidavit as being the amount evaded, so that the Petitioner can carry on its business. Learned Counsel for the Petitioner states that this offer was orally given during the interaction with the concerned Commissioner on 19 January 2023.

3. Learned Counsel for the Respondents will take instructions thereupon. It would aid the Commissioner to take a decision if the Petitioner reduces the statement of giving bank guarantee in respect of the amount specified in the impugned order in writing to the Commissioner.

4. Stand over to 25 January 2023 under the caption "For Directions".

2. The learned Counsel for the Petitioner has tendered the affidavit sworn by one Ramprakash Malpani, the Managing Director of the Petitioner – Company dated 24 January 2023 where in paragraphs 2 and 3 of the affidavit, the deponent has stated as under :-

“2. I say that, although the matter of mis-classification is disputable for the sake of buying peace with the Department, we wish to conclude the investigation proceedings under Section 28(6) of the Customs Act, 1962 (the Act) by paying the duty along with interest and penalty as envisages under Section 28(5) of the Act. The quantification of the duty, penalty and interest is as follows :-

Duty (Approx.)	Rs.8,27,00.000/-
Penalty (15%)	Rs.1,24,05,000/-
Interest	Calculated from due date of each shipment to the date of payment

Against the aforesaid duty, as a security, the Petitioner – Company has already deposited Rs.25,00,000/- with the Department as a gesture of good faith. Further, a Bank Guarantee amounting to Rs.1,05,00,000/- was also made to the Department.

3. I say that, as the Petitioner Company is under financial distress, the aforesaid payment would be made over a period of 5 months in the following manner :

a. Rs.2,00,000/- (Rupees Two Crores) within 2 working days of releasing the provisional attachment over the Petitioner Company’s bank accounts.

b. Rs. 2,00,000/- (Rupees Two Crores) each on 25 February 2023, 25 March 2023, 25 April 2023 and 25 May 2023.

c. Balance amount, if any, on 25 June 2023.”

4. The learned Counsel for the Respondents on instructions states that it is correct that the meeting between the Petitioner and the Commissioner took place and the Commissioner is agreeable to the course of action to be taken by the Petitioner in as stated in the affidavit in paragraphs 2 and 3. The learned Counsel for the Respondents states that in view of the undertaking given, release of the provisional attachment order would no longer survive and leaves it to the Court to pass an appropriate order.

5. Since the Respondent – Commissioner is satisfied with the undertaking given on affidavit and has made the statement as above, we quash and set aside the impugned attachment order. Order accordingly.

6. Since this order is passed on the undertaking given on behalf of the Petitioner, we place the responsibility of honoring the commitment on the deponent Mr. Ramprakash Malpani or his successor, Managing Director, who are put to notice that any breach thereof would be considered as contempt of this Court in addition to the action that the Custom Authorities may take.

7. The Writ Petition is accordingly disposed of.

ABHAY AHUJA, J.

NITIN JAMDAR, J.