IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13608 OF 2023

Girdhari International Pvt. Ltd. .. Petitioner
Versus
Commissioner of Customs (Export) & Ors. .. Respondents

Mr.Prateek Pansare i/by Mr.Saakshat Relekar for the Petitioner.
Mr.Jitendra B. Mishra a/w Mr.Dhananjay B. Deshmukh for Respondent Nos.1 to 5.
Ms.Shruti D. Vyas, Addl. G.P. a/w Ms.P.J. Gavhane, AGP for Respondent No.6 -State.

CORAM : G.S. KULKARNI &
JITENDRA JAIN, JJ.
DATE : 31st October 2023

P.C.:-

. By this petition under Article 226 of the Constitution of India, the petitioner has sought following substantive relief : -

> a) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order, or direction, quashing and setting aside the Impugned Notice dated 28th November 2022 (Exhibit "D" hereto) issued by Respondent No. 2 under Section 110 (5) of the Customs Act, 1962 thereby provisionally attaching the bank account of the Petitioner with Respondent No. 7 Bank."

2. Brief facts in the present petition are as under :-

(i) The petitioner is engaged in the business of import and export of readymade garments, fabrics, textile materials, dresses, sarees, etc.

(ii) On 21st October 2022 and 28th November 2022, summons were served on the petitioner under Section 108 of the Customs Act, 1962 calling upon the petitioner to submit documents referred to in the summons namely purchase order, purchase invoices, GST details etc.

(iii) On 28th November 2022, the respondents provisionally attached Bank Account No.367100100000645 of the petitioner with Saraswat Co-operative Bank Ltd., Surat, Gujarat, copy of which was marked to the petitioner.

(iv) During the period December 2022 to May 2023, the petitioner complied with the requisitions sought for by various summons by filing the documents called for.

(v) On 26th April 2023, the petitioner requested the respondents to lift the provisional attachment of the above referred bank account on the ground that since the summons have been complied with and the business of the petitioner was severely affected on account of the provisional attachment of its bank account. Similar requests were made by the petitioner vide letters dated 1st July 2023, 25th September 2023 and 18th October 2023. However, there was no response from the respondents on this request. It is on this backdrop that the present petition is filed.

3. Heard learned counsel for the petitioner and the respondents.

4. The petitioner relied on sub-section (5) of Section 110 of the Customs Act, 1962 and submitted that the provisional attachment of bank

account cannot be continued for a period exceeding six months unless such period is extended by the Principal Commissioner of Customs. The period of six months from the date of provisional attachment i.e. 28th November 2022 has already expired and there is no extension communicated to the petitioner and, therefore, by virtue of sub-section (5) of Section 110 of the Customs Act and by operation of law, provisional attachment expires.

5. The respondents do not dispute that the period of six months from November 2022 had already expired and there is no further extension as required under proviso to Section 110 (5) of the Customs Act.

6. Section 110(5) reads as under :-

> "**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.

7. The provisional attachment is dated 28th November 2022 and six months' period expired on 28th May 2023. The petitioner vide various letters dated 1st July 2023, 25th September 2023 and 18th October 2023 requested for lifting the said attachment. However, the respondents have not replied to the same. There is also no extension as required under the first proviso to Section 110(5) of the Customs Act. Therefore by operation of law, provisional attachment has expired and same is required to be defreeze.

8. We may observe that as per Section 110(5) of the Act, provisional assessment is valid for a period of 6 months unless extended by another 6 months, which is not the case in the instant proceedings. If that be so, then we fail to understand as to why the respondents inspite of various letters written by the Petitioner post expiry of 6 months did not defreeze the provisional attachment of the bank account. In our view, it was incumbent upon the respondents and they were duty bound to respond to the letters for defreezing the bank account and more particularly since the period of 6 months had expired and there was no further extension. The respondents have failed in their duty by not defreezing the bank account after the expiry of 6 months, which they should have done *suo-moto,* but have failed to do so inspite of various

letters written by the petitioner. Such inaction of the respondents have led to the present petition being filed before this Court. Not responding to the reminders for defreezing the account after the expiry of the statutory period of 6 months would also be contrary to the policy of the Government of ease of doing business.

9. In the light of the above discussions clearly, by operation of law, the provisional attachment dated 28th November 2022 has expired.

10. We, accordingly, pass the following order :-

(i) The provisional attachment of Bank Account No.367100100000645 of the petitioner with Saraswat Co-operative Bank Ltd., Surat, Gujarat vide letter dated 28th November 2022 is quashed and set aside.

(ii) The respondents are directed to inform the Branch Manager, Saraswat Co-operative Bank Ltd.,Surat, Gujarat withdrawing the provisional attachment of the said bank account within a period of one week from the date of uploading of the present order.

11. Petition is disposed of in above terms. No order as to costs.

(JITENDRA JAIN, J.) ***(G.S. KULKARNI, J.)***