Salgaonkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1309 OF 2025

Nitish Kumar Roy .. Petitioner

Versus

Union of India & Ors. .. Respondents

WITH

WRIT PETITION NO.1962 OF 2024

Yadavendra Kumar Roy .. Petitioner

Versus

Union of India & Ors. .. Respondents

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Mr.Darius Shroff, Senior Advocate with Dr.Sujay Kantawala, Mr.Anupam Dighe, Ms.Chandni Tanna, Mr.Prathamesh Chavan and Ms.Aishwarya Kantawala i/b India Law Alliance for the Petitioner in both the Petitions.

Mr.Jitendra B. Mishra with Ms.Sangeeta Yadav and Mr.Rupesh Dubey for the Respondent Nos.1 and 2 in both the Petitions.

Ms.Shehnaz V. Bharucha i/b A.A.Ansari for the Respondent No.3 in both the Petitions.

CORAM: BHARATI DANGRE &
SHYAM C. CHANDAK, JJ.
DATE : 08th DECEMBER, 2025

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JUDGMENT [Per Bharati Dangre, J.]:-

1. The Petitioners in both the Petitions, the Directors of Kaka Overseas Ltd. and Rugsotic Private Limited and claim to have excellent reputation in business circle, have filed the

present Petitions, seeking a declaration that the Look Out Circular (for short, **"LOC"**) dated 19/20.04.2022 issued against them and its subsequent renewals are in violation of the spirit of the Office Memorandum issued by the Ministry of Home Affairs governing the LOC. The Petitions seek a writ of mandamus for quashing and setting aside/withdrawal of the said LOC, including any subsequent renewals thereof.

2. We have heard learned senior counsel Mr.Darius Shroff alongwith Dr.Sujay Kantawala for the Petitioners in both the Petitions. Respondent Nos.1 and 2 are represented by learned counsel Mr.Jitendra Mishra, whereas Respondent No.3-Bureau of Immigration is represented by learned counsel Ms.Shennaz Bharucha.

3. Intelligence developed by Directorate of Revenue Intelligence, Mumbai, Zonal Unit, Mumbai suggested that some of the related exporters, namely, M/s.Kaka Overseas Ltd., M/s. Rugsotic Private Ltd. and M/s Shobha Woolens Pvt. Ltd. had indulged in the export of goods declared as carpets and fabrics of silk and other yarns to United States of America, by way of mis-declaring the value and other particulars of the same, to fraudulently avail ineligible higher rate of duty drawback and other export incentives. As per the intelligence, the said goods were majorly destined to USA and the consignees of such exports were identified entities and the buyer was either Maxcraft General trading LLC or RCL Trading FZE, both based in Dubai (U.A.E.). Acting upon the intelligence, consignments covered under 44 Shipping Bills were examined and

representative samples were drawn and in the course of the same, the business premises of the exporters and residential premises of key persons were searched under the provisions of the Customs Act, 1962.

During the course of investigation, statements of Yadvendra Kumar Roy and Nitish Kumar Roy (Petitioners herein), both Directors/Proprietor of the said exporter firms were recorded under Section 108 of the Customs Act alongwith the statement of Customs House Agent.

During the course of investigation, certain evidences were collected on the basis of which it is alleged that Kaka Overseas Ltd. had availed of ineligible duty draw back, an incentive for exporters, who get a refund of customs duty and other taxes on proof of export..

4. According to the Petitioners, from 30/09/2016 to 19/06/2022, the Department issue four show cause notices of four distinct timelines after completion of investigation and the follow-up of the same by the Petitioners is to the following effect:-

> "1. 30/09/2016 - for the period 2012-16. The Petitioners and Kaka Overseas Ltd. have filed their replies. The hearing has been concluded but till date that no order has been passed.
>
> 2. 02/12/2021- for the period 2020. This show cause notice was in respect of 44 Shipping Bills. This show cause notice has been adjudicated vide order dated 13/3/2023 (Exhibit D, page 96) where the Additional Commissioner of Customs confirmed the demand only in respect of 14 Shipping Bills as against a demand in respect of 44 Shipping Bills of entry. Against the said order the Petitioners have filed appeals to the Tribunal which are pending.

3. 01/09/2022 - in respect of the period 2017-2021 which was adjudicated vide OIO dated 17.11.2023. The OIO is challenged by the Petitioner before this Court by way of a Writ Petition.

4. 19/09/2022 - for the period 2017-21. This notice is also pending adjudication."

5. It is also the case of the Petitioners that the drawback payment was withheld by the Customs Authorities and this constrained Kaka Overseas Limited to file several writ petitions in which distinct orders were passed, permitting the provisional release of the goods or permitting export of the goods and submission of a Bond equivalent to the declared value of goods or on submission of the bank guarantee to the extent of 20% of the drawback payable.

While the investigation was on-going, the Petitioners rendered their co-operation and even after completion of investigation, the statements of the Petitioners were once again recorded. It is in these background, an LOC was issued on the basis of the intelligence received that the exporters controlled by Kaka Group of Companies continued to indulge in fraudulent availment of duty drawback and other export incentives.

6. While the investigation was in progress, the summons were issued to the respective companies, including M/s Kaka Overseas as well as the Director of M/s Rugsotic Pvt. Ltd and also to other several entities of the connected companies. According to the Petitioners, though LOC was issued against them, but the copy of the same was never made available and it is the case of the Petitioners that they always rendered their cooperation in investigation.

7. Learned senior counsel Mr.Shroff would urge before us that the investigation initiated by Respondent No.3 never resulted into registration of an offence and all the while, the Department continued with its procedure of issuing show cause notices, restricting its demand only against 14 shipping bills out of 44. He would submit that the Petitioners rendered full cooperation to the Department in the investigation and even answered various summons issued by the officers of the Respondent No.2.

8. Apprehending that an offence may be registered in the wake of the investigation conducted, though the Petitioners rendered all cooperation, the Petitioners filed anticipatory bail application before the Sessions Court at Mumbai, which was rejected, but on an application being moved before the High Court, by order dated 08/06/2023, the application was allowed, by specifically recording as under :-

> "The question whether the other bills reflect correct value or have been overvalued, is yet to be adjudicated. At this stage, there is no material on record to indicate that the Applicants had availed higher rate of duty drawback on the shipping bills. The Applicants have appeared before the Authority and the statement of the Applicants has been recorded on various dates. Considering the nature of accusations, in my considered view, this would not be a case for custodial interrogation."

It is worth to note that the Petitioners' arrest is prevented by this Court, as the anticipatory bail application filed by them is allowed. Though Mr.Mishra makes a statement that steps are being taken for seeking cancellation of anticipatory bail granted to them, no such steps are taken till this date.

9. The grievance of the Petitioner is, till date i.e. after passage of more than three years from the date when the LOC was issued, the same continue to be in force.

Being aggrieved by the issuance of LOC, the Petitioners approached Delhi High Court,but sought withdrawal of the petition, resultantly, it was disposed of on 10/10/2023.

10. Mr.Shroff has urged before us that the Petitioners approached this Court by filing the present Writ Petitions with the aforesaid relief and from time to time, they sought permission form the Court to travel out of the country for business purposes as the travel had become necessary for expansion of the business. Considering the right to travel as a fundamental right covered under Article 21 of the Constitution of India, and in the wake of the fact that no criminal proceedings are either initiated or pending against the Petitioners, this Court permitted them to travel.

It is in these circumstances, it is urged before us that the LOC issued in the year 2022 cannot remain active after three years, specially when the investigation having already been completed, show causes notices issued and adjudicated upon and particularly when the Petitioners have rendered their cooperation in the investigation.

Relying upon the decision of Delhi High Court in **Sumer Singh Salkan vs. Asstt. Director & Ors.**[1]**,** Mr.Shroff had submitted that LOC can be issued only in cognizable offences under the Indian Penal Code or other criminal laws where the accused is avoiding arrest or not appearing. However, in the present case, since no criminal case has been filed against the

1 2010 SCC OnLine Del 2699

Petitioners, there is no justification for taking out LOC, particularly when the Petitioners have regularly responded to the summons issued by the authorities and handed over approximately 8000 documents and the investigating agencies have cloned the Petitioners' hard disks and phones and issued four show cause notices, two of which are already adjudicated and other two are pending. It is also submitted that the Petitioners have given bank guarantee for disputed drawback and, therefore, there is no justification for continuing with the LOC issued in the year 2023.

11. The reliefs sought by the Petitioners are opposed by the Directorate of Revenue Intelligence by filing an affidavit-in-reply, affirmed by Mishal Queeni D'Costa, Deputy Director, Directorate of Revenue Intelligence, Mumbai Zonal Unit,, which has made an exhaustive reference to the intelligence received and action taken thereupon, as according to the Respondent, the consignment of three exporters out of five exporters, namely, M/s Kaka Overseas Ltd., M/s Rugsotic and M/s Rugsotic Pvt. Ltd., which were being attempted to be exported from Nhava Sheva Port and lying in the CFS's namely, JWC Logistics Pvt. Ltd. and M/s. JWR Logistics Pvt. Ltd. and these consignments attempted to be exported under several shipping bills, were directed to be put on hold. Referring to the entire investigation, including issuance of summons, the affidavit states that both the Petitioners did not honour the summons. It is in these circumstances, the issuance of LOC is sought to be justified.

Mr.Mishra has raised a serious objection about the Petitioners approaching Delhi High Court and, thereafter, withdrawing the petitions, without seeking liberty of the Court to file fresh proceedings. He would place reliance upon the decision in the case of ***Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P. Gwalior, & Ors.***[2]. It is categorically stated in the affidavit that the Respondents have acted in accordance with the Office Memorandum dated 27/10/2010, which has conferred necessary powers on Respondent Nos.1 and 2 to take such action against the Petitioners to ensure that they do not flee from the country, particularly when the Revenue suspect their involvement in high value economic offences and it is necessary to have their presence in the country in light of the on-going investigation. The affidavit rely on the following circumstances justifying the issuance of the LOC :-

> "(a) Respondent had issued summons u/s 108 of the Customs Act, 1962 to the petitioner on several occasions. The said summons were issued with respect to investigation into the duty drawback fraud perpetuated by the said exporters through over-valuation of exports;
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> (b) It is submitted that merely being present in the DRI office does not amount to co-operation. Giving vague and evasive answers to the questions asked, despite having knowledge, with an intent to hoodwink the authorities and cause dent in the investigation amounts to clear non-cooperation;
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> (c) It is submitted that there is a strong prima facie case against the Petitioner. His role is spelt out as per material gathered so far during the investigations, i.e. the admissible statements of his employee and Senior Manager, Shri Vikram Singh Baghel who was handling the USA operations for the Petitioner. The statements of the said persons clearly point out the role, involvement and knowledge of the said Petitioner

2 (1987) 1 SCC 5

in illegally availment of the duty drawback and thereby causing huge economic loss to exchequer;

(d) It needs no reiteration that economic offences affect the financial stability of the country. Economic offences attempting to defraud the public exchequer during one of the worst pandemics in centuries, where there is severe stress on the economy while the Government is taking all efforts to resuscitate the economy, are especially heinous and deserve to be condemned even more severely. The Respondent has substantial reasons to believe that the Petitioner and his group companies are involved in a serious attempt to defraud the public exchequer and it is most humbly prayed that the Respondent be allowed to take the investigation to its logical conclusion;

(e) The Respondent humbly submits that the show cause notice no.539/2020-21/JC/DBK/CAC/JNCH dated 02.12.2021 was issued to aforesaid exporters for live consignments, for 44 Shipping Bills only. Investigation in respect of past consignments, large in numbers (approx. Shipping Bill numbers are 1040) is still undergoing;

(f) Further, in a case of drawback there is no statutory limitation prescribed under the Customs Act as it so done under Section 28 of the Act, which is in any manner not applicable to the present case. Moreover, Rule 16 of the duty drawback rules do not prescribe any time period in such case;

(g) Importantly, at the moment, Respondent is at the stage of investigation which cannot be curtailed unless statutorily barred or is vexatious / malicious. "

12. On the previous date of hearing, we directed Mr.Mishra to produce before us the copy of the LOC, and accordingly, he has produced the same before us.

We also had an opportunity to peruse the draft of the investigation report in respect of the goods covered under 44 shipping bills and goods covered under 12 shipping bills, being forwarded to the Commissioner of Customs Nhava Sheva.

The proposal for LOC referred to the accusations and in light of the investigation under the Customs Act, 1962, request for issuance of LOC in respect of the Petitioners came to be forwarded to the DRI. From the noting presented before us, we find that the issuance of 'Look Out Circular' has its genesis in the investigation initiated against the various exporters, including the companies in which the Petitioners were Directors and it is premised on the basis that; the two Petitioners alongwith Mr.Vikram Singh Baghel are prominently the masterminds of the whole conspiracy. However, in Writ Petition (L) No.13380 of 2022 filed by Smt.Rita Roy & Ors., *inter alia*, praying for interim/ad-interim relief that DRI may be restrained from taking any coercive action against the Petitioners and from summoning them or any other person, the High Court had passed an order, directing as below :-

> "Till the next date,if any recovery notice or coercive steps are proposed to be taken by the Respondents then ten days notice to be given to the Petitioners."

The noting reflect that it is in this background, it was advised that LOC being coercive measure, the same may not be issued and only summons were directed to be issued.

We, therefore, do not find any specific order directing issuance of LOC in the file placed before us, but the noting dated 11/05/2022 is only as regards issuance of summons to the Petitioners in terms of the High Court order.

13. The purport of a Look Out Circular is well chartered through various circulars/memorandums issued by the Home Ministry and as indicated in the guidelines, the recourse to

LOC is to be taken in cognizable offences under IPC or other criminal laws. The said circular also contemplate recording of 'reason for opening LOC', which must be invariably provided without which, the subject of an LOC will not be arrested/detained. The LOC is thus permitted to be issued only on justiciable reasons and, particularly when the accused is deliberately evading arrest or not appearing before the trial Court, despite non-bailable warrants or other coercive measures or there is likelihood of the accused/person of leaving the country to evade the trial/prosecution/arrest or for any other reasons stipulated in the consolidated guidelines issued by the Home Ministry. The LOC must, therefore, satisfy the requirement stipulated in the Circular and merely because an FIR is registered, can be no justification for opening of an LOC. Further, the consolidated guidelines regarding LOC also specify that the LOC opened shall remain in force unless and until deletion request is received by the Bureau of Immigration from the Originator itself and it shall not be deleted automatically, however, the Originating Agency must keep reviewing the LOC, which is opened at his behest on quarterly and annual basis and take appropriate steps upon such a review being undertaken.

14. The Office Memorandum issued by the Government of India on 22/02/2021 in form of consolidated guidelines for issuance of LOC in respect of Indian citizens and foreigners, with reference to the decision of the Delhi High Court in the case of *Shri Vikram Sharma Vs. Union of India*, modified the existing guidelines, setting out as to what are the categories of

cases in which the investigating agency can seek recourse to the Look Out Circulars and under what circumstances and also what procedure is required to be followed by the investigating agency before opening a Look Out Circular?

The said circular placed before us, clearly contemplate that an LOC can be issued upon a request being made by the Originating Agency (OA) to the Deputy Director, Bureau of Immigration (BOI) and LOC is also permitted to be initiated as per the directions of the criminal court, but it shall be initiated by the local police or by other law enforcement agencies upon the parameters of opening of LOC being available.

It is categorically stated that LOC cannot be opened unless minimum of three identifying parameters are available and it is the responsibility of the Originator to constantly review the LOC request and also pro-actively provide additional parameters to minimise harassment to genuine passengers. In clause (H), (I) and (J), it is categorically provided thus :-

> "(H) Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws, The details in column IV in the enclosed Proforma regarding 'reason for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/detained.
>
> (I) In cases, where there is no cognizable offence under IPC and other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The Originating Agency can only request that they be informed about the arrival/departure of the subject in such cases.
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> (J) The LOC opened shall remain in force until and unless a deletion request is received by BoI from the Originator itself. No LOC shall be deleted automatically. Originating Agency must keep reviewing the LOCs opened at its behest on quarterly and annual basis and submit the proposals to delete the LOC, if any, immediately after such a

> review. The BOI should contact the LOC Originators through normal channels as well as through the online portal. In all cases where the person against whom LOC has been opened is no longer Wanted by the Originating Agency or by Competent Court, the LOC deletion request must be conveyed to BoI immediately so that liberty of the individual is not jeopardized."

15. An another relevant clause of the guidelines in form of clause (L) reads thus :-

> "(L) In exceptional cases, LOCs can be issued even in such cases, as may not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (B) above, if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in the larger public interest at any given point in time."

16. On testing the action initiated against the Petitioners in form of issuance of LOC, in our opinion, we do not find that the parameters for issuance of LOC are made out, as the Petitioners are not the accused of committing cognizable offence nor any criminal case is registered against them.

The apprehension that the Petitioners would flee the country is also manifestly untenable, as we have noted that the Petitioners have regularly travelled under the permissions granted by the Court from time to time and they have returned on every occasion. Apart from this, the Petitioners have strong presence in the country and their business roots are spread throughout as they are in the said business for last forty years, with several immovable properties, including factories in the country.

The plea that the investigation is still on-going is also not a ground to continue or extend the LOC, as despite considerable time being spent in investigation, no criminal proceedings are initiated and the Department has resorted to the proceedings available under the Customs Act, which are underway in the courts in this country and the apprehension that the Petitioners are at flight risk is also unfounded. As far as the grievance of the Revenue that the Petitioners have not appeared in response to the summons and have not supplied US custom declarations, according to the Petitioners, they had admittedly appeared before the authorities and their statements have been recorded. The investigation lead to issuance of show cause notices and the notices are also adjudicated.

The insistence of Respondent No.2 of demanding the US custom declarations cannot be a justification for issuance of LOC, as during the course of investigation, if the Department is desirous of securing any documents from the Petitioners, there are ways and means to do so, but LOC, which is a coercive measure, definitely cannot be invoked as it has trammeled upon the right to travel, which is recognized as fundamental right under Article 21 of the Constitution of India.

In fact, the Revenue attempted to secure this information by filing an interim application before this Court in past. Upon an Interim Application taken out by Union of India for issuance of direction to furnish the documents within the knowledge and domain of the Petitioners pertaining to transaction carried out it United States of America, it came to be rejected by the Division Bench of this Court on 22/08/2025, by holding that the Revenue is at liberty to exercise the power conferred under the statute, so as to secure the custody of the document, if any, for completing the investigation.

In our considered view, the Petitioners have participated in the inquiry/investigation and we find that the continuation of the LOC issued in the year 2022, without a review being undertaken and when Mr.Mishra has specifically conceded to the position that there was no review of the LOC issued against the Petitioners, we cannot permit continuation of the said LOC, which at the outset is, totally based on unfounded reasons and in no case in consonance with the guidelines issued by the Ministry of Home and, therefore, cannot be sustained.

17. In the wake of the aforesaid, the Writ Petitions are made absolute by quashing and setting aside the Look Out Circular dated 19/20.04.2022 issued against the Petitioners and its subsequent renewals, as initiation of the same is contrary to the Office Memorandum dated 22/02/2021 and further also on the ground that its continuation is illegal, as no attempt has been made to review the Look Out Circular issued, and hence, it cannot remain in force indefinitely.

(SHYAM C. CHANDAK, J.) **(BHARATI DANGRE, J.)**

18. At this stage, learned counsel for DRI prays for grant of stay. However, this request is strongly opposed by the other side.

On consideration of merits of the matter, since we have already expressed that LOC could not have been issued against the Petitioners and the same could not have been continued, without its further extension, prayer is rejected.

(SHYAM C. CHANDAK, J.) **(BHARATI DANGRE, J.)**