(2005) 10 GUJ CK 0059

In the Gujarat High Court

Case No : Special Civil Application No. 17113 of 2005

A.M. Overseas APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 14-10-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 110(1), 110(3), 113, 121, 2(22)

Citation : (2006) 194 ELT 267

Hon'ble Judges : H.N. Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : P.R. Nanavati, for the Appellant; R.J. Oza, for Respondents 1-3, P.J. Malkan, for Respondent 1 and Mahesh Thakar, for Respondent 4, for the Respondent

Judgement

D.A. Mehta, J.—This petition is filed under Article 226 of the Constitution of India, assailing the action of respondent No. 4 bank of not permitting the operation of bank account No. 051102 000 014580 i.e. Current Account of the petitioner with respondent No. 4 bank.

2. It is the case of the petitioner that, by communication dated 5/8/2005 (Annexure SA), the respondent No. 4 informed the petitioner that the cheques issued by the petitioner could not be cleared because of the direction issued by Directorate of Revenue Intelligence, Surat under the provisions of Section 110(3) read with Section 121 of the Customs Act (the Act). The petitioner, therefore, approached this Court and pointed out that, in light of the decision rendered in case of Raghuram Grah Pvt. Ltd. Vs. Commissioner of C. Ex. and Service Tax, the bank account cannot be frozen by respondent authorities during pendency of investigation.

3. Upon issuance of notice, respondents have put in appearance. Mr. R.J. Oza, the learned additional standing counsel appears on behalf of the respondent Nos. 1, 2 and 4, while Mr. K.H. Pathak for Mr. Mahesh Thakor appears for respondent

No. 4. Heard Mr. P.R. Nanavati, the learned counsel for the petitioner. Rule. Mr. R.J.Oza waives service of rule for respondent No. 1, 2 and 3. Mr. K.H. Pathak waives service of rule for respondent No. 4.

4. Mr. Oza invited attention of the Court to provisions of Section 110(1) read with Section 110(3) of the Act as well as Sections 121, 2(39) and 113(i) of the Act, to submit that, on a conjoint reading of the aforesaid provisions, respondent authorities derive power to take action for confiscation of smuggled goods as well as sale proceeds of such goods. That if value of any goods which are entered for exportation does not correspond to the value declared, the respondent authority is empowered to confiscate the goods, and in the present case, the investigations which are in progress, indicate that there was over-valuation of the goods exported. That the petitioner is not acting on his own and the action of the petitioner in exporting the goods, receiving the sale proceeds thereof and operating the bank account wherein such sale proceeds are deposited are all at the behest of one group known as Chakkivala Brothers, against whom investigation is in progress. He, therefore, urged that, in these circumstances, the action of the respondent authorities was within four corners of law and was supported by the facts which have been revealed during course of investigation.

5. The principal plank on which the case of the respondent authorities is built is Section 113(i) of the Act and Section 110(3) of the Act. None of the provisions support the action of the respondent authorities. Section 113 opens with The following export goods shall be liable to confiscation. Clause (i) talks of any goods entered for exportation. Therefore, on a plain reading of the provisions, it is apparent that the provisions can operate only at a stage which is prior to actual export of goods. This becomes very clear from reading of the other clauses of Section 113 of the Act. In the present case, it is not disputed that the goods were already exported in past and the petitioner is not seeking any order permitting clearance of goods for export. It is not even the case of respondent authorities that any goods have been entered for exportation, which is the requirement of the provision.

6. Coming to Section 110(3) of the Act, it permits the authority to exercise power on seizure of any document or thing which, in the opinion of the authority, will be useful for, or relevant to, any proceeding under the Act. Emphasizing the use of the term `things'' in the provision, it was submitted that when the same is read with definition of `goods'' u/s 2(22) of the Act, as also the definition of the term `things'' from the Black''s Law Dictionary, it would also take within its sweep `currency'', and in the circumstances, the action of the respondent authorities was required to be upheld. The said submission, though attractive at first blush, does not hold ground when the same is examined in light of the scheme of the Act. One cannot lose sight of the fact that the provision is part and parcel of a statute which deals with import and export of goods. In other words, permitting such transactions of goods in accordance with law. The term `currency'' is used in the definition of the term `goods'' in the context of either

importing the currency or exporting the currency through legal channels or illegally. In violation of the requisite law in relation to such transactions of currencies, the authority would be empowered to take appropriate action under the Act. In the present case, it is not the case of respondent authorities that the petitioner is either dealing in currency or is charged with illegally transacting in currency by way of import or export. Therefore, even this provision cannot support the action of respondent authorities.

7. Though Mr. Oza has addressed the Court in relation to various facts narrated in the affidavit in reply, it is not necessary to deal with the same at this stage, for the simple reason that the investigation which is in progress should not be affected by any observation or finding which the Court may record in relation to the facts and evidence which is in the stage of being ascertained, collated and brought on record. Therefore, without entering into any discussion on merits of the facts and evidence, suffice it to state that the averments made in the affidavit in reply do not carry the case of revenue any further.

8. In these circumstances, the action of respondent No. 4 in preventing the petitioner from operating its account, being Current Account No. 051102 000 014580 is bad in law as the respondent Nos. 1, 2 and 3 could not have issued any direction under provisions of Section 110(3) read with Section 113(i) and Section 121 of the Act. The respondent No. 4 bank is accordingly directed to release the account of the petitioner, being Current Account No. 051102 000 014580, and permit operation thereof forthwith. The petition is accordingly allowed to the aforesaid extent.

9. Before parting, it may be clarified that any expression of opinion made hereinbefore is only in light of the facts which are available on record today. In the event, the respondent authorities are able to lay their hands on any evidence which might permit any other action in accordance with law on completion of the investigation, this order shall not stand in way.

10. At this stage, Mr. Oza submits that the operation of this order may be stayed for a period of three weeks. Considering the facts available on record, the request is rejected.

11. Rule made absolute with no order as to costs. Direct service is permitted.

