

(2021) 01 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition (ST.) No.94899 Of 2020

Goodmatric Export Pvt. Ltd. And Another	APPELLANT
Vs	
Union Of India And Others	RESPONDENT

Date of Decision : 19-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Customs Act, 1962 — Section 110, 110(5), 121

Citation : (2021) 01 BOM CK 0013

Hon'ble Judges : Ujjal Bhuyan, J;Milind N. Jadhav, J

Bench : Division Bench

Advocate : Brijesh Pathak, Yogita V. Gogar, Pradeep Jetly, J. B. Mishra

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J

1. Heard Mr. Pathak, learned counsel for the petitioners and Mr. Jetly, learned senior counsel assisted by Mr. Mishra, learned counsel for the respondents.

2. Challenge made in this writ petition is primarily to the letter dated 08.05.2019 issued by the Directorate of Revenue Intelligence, Kolkata Zonal Unit

(respondent No.2) to the General Manager, Kotak Mahindra Bank Limited, Malad (East), Mumbai (respondent No.3) requesting debit-freeze of one account of the petitioners.

3. A perusal of the letter dated 08.05.2019 would go to show that there was an ongoing investigation undertaken by the Directorate of Revenue

Intelligence in respect of import of precious and semi-precious stones from Kolkata. In the course of the investigation, it was found that petitioners had

opened an account in the bank of respondent No.3 bearing Account No.2812920972. Respondent No.3 was requested to keep the said account under debit-freeze mentioning that the letter was issued in terms of section 110 of the Customs Act, 1962.

3.1. Following the above provisional attachment, three other bank accounts of the petitioners with respondent No.3 were frozen with effect from

15.05.2019 being Account Nos.9612928856, 9712429789 and 9812301930 on instructions issued by respondent No.2.

4. Respondents have filed reply affidavit. Stand taken in the affidavit is that an intelligence was developed by the Directorate of Revenue Intelligence,

Kolkata Zonal Unit to the effect that certain unscrupulous importers were importing goods declared as "rough precious stones and semi-precious

stones", which were over-invoiced. During the investigation it revealed that petitioners had made such imports from overseas supplier of

Hongkong. Rationale for importing such "rough precious stones and semi-precious stones" is that value of those can be inflated and there is no

customs duty on the said items. Only Integrated Goods and Services Tax (IGST) is required to be paid but that too at the rate of only 0.25%. Such

imports made by the petitioners would be to the tune of Rs.2000 crores. One person by the name of Shri. Sourabh Johari of Madhya Pradesh who

was involved in this fraudulent import has been arrested. In his statement he has admitted that he undertook such fraudulent imports on behalf of

several companies including that of the petitioners. Summons were issued to the Directors of petitioner No.1 for appearance but summons could not

be served as they were not found in their declared addresses. They did not appear before the Directorate of Revenue Intelligence and did not co-

operate with the investigation. In so far provisional attachment of the bank account is concerned, while admitting that under section 110(5) of the

Customs Act, 1962, provisional attachment can be for a period of only 12 months it is however stated that petitioners have neither approached the

Directorate of Revenue Intelligence to prove the bona fides of their imports nor have they joined the Directorate of Revenue Intelligence in the

investigation. Due to non-cooperation of the petitioners, investigation has not reached its finality.

5. Petitioners have filed rejoinder affidavit denying the allegations made by the respondents in their reply affidavit and reiterating what has been

contended in the writ petition.

6. While learned counsel for the petitioners submits that issue involved in the present writ petition is within a narrow compass, namely, whether

provisional attachment of bank account can be continued beyond the period of six months extendable by another period of six months. In so far the

present case is concerned, he submits that even the extended period of six months was not available to the respondents as no order was passed for

extending the initial period of six months.

7. On the other hand, Mr. Jetly, learned senior counsel for the respondents has extensively referred to the averments made in the reply affidavit and

submits that conduct of the petitioners does not inspire confidence. Such a person is not entitled to invoke the discretionary jurisdiction of the writ court

under Article 226 of the Constitution of India.

8. Submissions made have been considered.

9. From a perusal of the impugned letter dated 08.05.2019, it is seen that during the course of the investigation it had come to the notice of the

Directorate of Revenue Intelligence, Kolkata Zonal Unit that petitioners had opened an account with respondent No.3 and for that reason, the said

account of the petitioners was required to be kept under "debit freeze". It was mentioned that the letter was issued in terms of section 110 of

the Customs Act, 1962. However, even this letter does not indicate that activities of the petitioners are unlawful and that they had credited into their

bank account, money which have accrued out of such unlawful activities which is required to be frozen except generally stating that "whatever

amount (balance) is lying in the concerned bank accounts, the same have been seized by this office, in terms of section 110 of Customs Act, 1962

read with section 121 of Customs Act, 1962, as there are reasons on record to indicate that the companies have engaged in the act of smuggling."

10. But the moot question raised in the writ petition is whether a provisional attachment of bank account can be continued beyond the period of one

year?

11. Section 110 of the Customs Act deals with seizure of goods, documents and things. Sub-section (5) was inserted in the said provision by Finance

(No.2) Act, 2019 with effect from 01.08.2019. Sub-section (5) of section 110 reads as under:-

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.

12. Thus provisional attachment of bank account can be for a period of six months but the said period can be extended for a further period not

exceeding six months for reasons to be recorded in writing and communicated to the affected person before expiry of the initial period of six months.

13. In M/s. Boxster Impex Pvt. Ltd. Vs. Union of India and other connected cases decided on 22.09.2020, this Court held as follows:-

29. From the above it is evident that the said provision was inserted in the statute with effect from 1st August, 2019. Besides, from the tone and

tenor of the sub-section it is apparent that it is not a procedural provision per se; rather it is coercive in nature, though the procedure is also laid down

for giving effect to the said provision. Being a coercive provision, there has to be strict compliance to the procedure laid down. In such circumstances

and having regard to its very nature, such a provision can only have prospective operation and not retrospective operation. In fact, the concerned

Finance Act makes it explicit by making the provision effective from a prospective date i.e. from 1st August, 2019.

30. Letter from the office of the Principal Commissioner of Customs to the Branch Manager of IDFC Bank was issued on 1st March, 2019 for

freezing of the bank account of the petitioner. This was prior to insertion of sub-section (5) in Section 110 with effect from 1st August, 2019.

Therefore, it is quite clear that this provision could not have been invoked for freezing the bank account of the petitioner.

31. Even otherwise, we find that the above provision can only be invoked in the manner provided therein which can be culled out as under :-

- (i) The order of attaching the bank account provisionally shall be passed in writing by a proper officer;
- (ii) Such an order can be passed during any proceedings under the Customs Act;
- (iii) Before passing such an order the proper officer must form an opinion that such attachment of bank account is necessary for the purposes of protecting the interest of revenue or for preventing smuggling;
- (iv) Before passing such an order the proper officer must obtain prior approval of the Principal Commissioner of Customs or of Commissioner of Customs; and
- (v) Such provisional attachment shall be for a period not exceeding six months.

32. As per the proviso the Principal Commissioner of Customs or Commissioner of Customs can extend such provisional attachment for a further period not exceeding six months; but he must record reasons for such extension and such extension of period has to be informed to the person whose bank account is provisionally attached before expiry of the period so specified.

33. Thus from a careful reading of sub-section (5) of Section 110 it is noticeable that several pre-conditions and procedures are mandated. It may not be necessary for an elaborate deliberation of the same in view of the fact that respondents in their affidavit have not placed on record any order passed by the Principal Commissioner of Customs or Commissioner of Customs under sub-section (5) of Section 110. Suffice it to say that an order in writing for provisional attachment of a bank account is a must before such an account can be attached. In the absence of such an order in writing respondents could not have provisionally attached the bank account of the petitioner and continued with such attachment even beyond the permissible extended period.

34. Learned counsel for the respondents could not show any other provision in the Customs Act which empowers or authorizes the customs department to freeze the bank account of a person other than sub-section (5) of Section 110. Such attachment of bank account of the petitioner on 1st March, 2019 and its continuation thereafter being in breach of Section 110(5) is therefore, without any authority of law.â??

14. In *Samyak Jewels Pvt. Ltd. Vs. Union of India* decided on 25.09.2020, this Court was confronted with a similar issue where also bank account of

the petitioner was frozen on 19.04.2018 and continued to remain frozen for a period of more than one year. Examining the meaning of the word

“provisional”, it has been held that it is a temporary arrangement. The two words - “provisional” and “attachment” read in

conjunction can only mean a temporary attachment. It is for this reason that Parliament has provided a definite timeline in sub-section (5) of section

110 of the Customs Act, 1962. It has been held as under:-

“8. Following the above, we do not find any good reason to sustain the communication dated 19th April, 2018 as more than two years have elapsed

since the bank account was frozen. We may mention that sub- section (5) of Section 110 speaks of provisional attachment. Dictionary meaning of

provisional is “arranged or existing for the present, possibly to be changed later”; Black’s Law Dictionary, Eight Edition, has defined it as

“temporary or conditional”. Therefore, the statute has provided a definite time line beyond which the attachment becomes bad in law.”

15. In the light of the above, we do not find any justification to continue with the provisional attachment of the bank accounts of the petitioner. We

may mention that in the reply affidavit of the respondents, it has neither been pleaded nor any document has been annexed thereto to show that any

order was passed by the Principal Commissioner of Customs or Commissioner of Customs firstly for provisional attachment of bank accounts of the

petitioners and secondly for extending the initial period of six months to a further period not extending six months. The initial period of six months had

expired in November, 2019. Even assuming and giving benefit of further six months to the respondents, the outer limit of one year expired in May,

2020. That apart, Finance (No.2) Act, 2019 was given prospective application with effect from 01.08.2019. The provisional attachment was made on

08.05.2019 when the said provision was not available in the statute book. This aspect was gone into in M/s. Boxter Impex Pvt. Ltd. (supra) holding

that the said provision had prospective application. Therefore, such exercise of power is clearly unlawful and in any case cannot be continued now

after expiration of the outer limitation period of one year.

16. However, since we are only concerned with the legality and validity of the provisional attachment of the bank accounts of the petitioners, we do

not express any opinion on the investigation carried out by the respondents or on

any action that may be taken by the respondents in accordance with law. It is in the petitioners' interest to co-operate with the investigation carried out by the respondents.

17. Subject to the observations made above, impugned letter dated 08.05.2019 (Annexure-F to the writ petition) is set aside and quashed.

Petitioners' Bank Account No.2812920972 maintained with respondent No.3 shall be unfrozen forthwith. Consequently, the other bank accounts

of the petitioners maintained with respondent No.3 bearing Account Nos.9612928856, 9712429789 and 9812301930 shall also be unfrozen

immediately.

18. Writ petition is accordingly allowed to the above extent. However, there shall be no order as to costs.