

(2010) 01 DEL CK 0361

In the Delhi High Court

Case No : Writ Petition (C) No. 7992 of 2008

Laxman Overseas

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 25-01-2010

Acts Referred:

Citation : (2010) 167 DLT 302 : (2010) 252 ELT 512 : (2010) 3 ILR Delhi 371

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Deepak Gandhi and Amit Kumar, for the Appellant; Ravinder Agarwal, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—This writ petition under Article 226 of the Constitution challenges the action of the Respondent Directorate Revenue Intelligence ("DRI") in continuing to keep the bank accounts of the Petitioner frozen.

2. According to the Respondents, as stated in their counter affidavit in the present case, on the evening of 7th September 2005 certain consignments of imported duty free high value computer parts imported in the name of M/s. Everest Exports were taken delivery of at the Air Cargo complex, IGI Airport, New Delhi. They are alleged to have been taken to the residence of Shri Bhuvan Aggarwal the proprietor of the Petitioner M/s. Laxman Overseas, the petitioner herein, and unloaded there. During a subsequent search of the Petitioner's premises the imported goods were found to be high value computer parts. Their present market value was estimated at Rs. 1.80 crores whereas the description of the goods declared in the Bill of Entry was "mounted PCB for digital data recorder" and their value was declared as Rs. 6,76,060 (C.I.F. value). It is alleged that during the search of the petitioner's premises a few days later, PCBs of inferior quality/junk old PCBs were apparently stored for being to the factory premises at Noida for substitution in place of duty free imported goods in future. A reference is made in the counter affidavit to certain other transactions

involving the Petitioner which led to the conclusion that the Petitioner was exporting junk material by declaring it as "mounted PCBs for telecommunication, plastic grating and sewing needles."

3. In relation the petitioner's bank accounts which were frozen, it is stated in para 9(d) of the counter affidavit as under:

The money lying in the EEFC Account No. 3004042934 are sale proceeds of goods exported by the present Petitioner. The investigation conducted so far including inter caption of live export consignments revealed that the present Petitioner was indulging export of junk goods declaring the same as high value goods. Therefore, the bank accounts of the Petitioner and its proprietor are subject to seizure u/s 110(3) of the Customs Act, 1962 and the money lying in those accounts is liable for confiscation u/s 121 *ibid*. Further, the provisions of Section 110(2) of the Customs Act, 1962 which lay down that in case of seizure of goods as per provisions of Section 110(1) of the Act *ibid*, in case no notice is given u/s 124 of the Act *ibid*, then the goods shall be returned to the persons from whom they were seized. In this case, however, the bank accounts have been frozen in terms of Section 110(3) of the Act *ibid*, to which the limitation laid down u/s 110(2) is not applicable Judgment of Hon'ble High Court of Calcutta in case of Rohit Kumar v. Union of India as discussed above refers.

4. Further in para 10 of the counter affidavit it is stated as under:

Thus it is observed that there is a proclivity on part of the accused to not only evade duties, but also to dishonor the legal processes that have been initiated by the Government, such as, summons etc. In these circumstances, without prejudice to our argument above, there is a strong likelihood of the accused withdrawing the money in these bank accounts, which is otherwise liable for confiscation being sale proceeds of smuggling. Therefore, on this count too, the accounts should continue to remain frozen.

5. As can be noticed from the above averments the Respondents refer to Section 110(3) of the Customs Act, 1962 ("Act") to justify the freezing of the petitioner's bank accounts. In addition, learned Counsel for the Respondents relies upon Section 121 of the Act to justify the continued freezing of the petitioner's bank accounts.

6. learned Counsel for the Petitioner points out that the sole proprietor of the Petitioner concern, Shri Vipul Aggarwal, was placed under preventive detention by an order dated 3rd January 2006 under the Conservation of Foreign Exchange and Prevention of Smuggling Act (COFEPOSA). The said detention came to be quashed by the order passed by the Division Bench of this Court on 1st December 2006 by allowing Writ Petition (C) No. 1485 of 2006 filed by his mother Smt. Suman Aggarwal. The above orders have been challenged by the Respondents by filing SLPs which are stated to be pending in the Supreme Court.

7. The fact of the matter is that after the detention of the sole proprietor of the

Petitioner was quashed, the Respondent No. 1 DRI has returned to the Petitioner the goods and things seized from it. learned Counsel for the petitioner points out that this fact is not denied by the Respondents and therefore he questions the purpose of keeping the Petitioner's bank accounts frozen for over four years. He assails the said action as being totally unjustified particularly since till date no show cause notice has been issued by the Petitioner and therefore no explanation has been sought from it. No criminal case has been filed and the sole proprietor of the Petitioner has never been arrested. It is submitted that there is no legal basis for the bank accounts to remain frozen indefinitely.

8. Since learned Counsel for the Respondents has placed considerable reliance on both Section 110(3) and Section 121 of the Act, the said provisions need to be examined. Section 110(3) reads as under:

Section 110(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceedings under this Act.

It is plain from Section 110(3) that the formation of a prima facie opinion by the proper officer is a pre-requisite for the exercise of the power to seize any goods, documents or things. The opinion to be formed is that they would be "useful for, or relevant to, any proceeding under this Act." This does not mean that once this power has been exercised there is nothing to be done thereafter by the officer for any number of years. The said power is coupled with a responsibility to act fairly and reasonably for only then can the abuse of such power be checked. The interpretation of Section 110(3) of the Act has to be consistent with this understanding of statutory powers of public authorities, which have to conform to the requirement of non-arbitrariness implicit in Article 14 of the Constitution. If the power of seizure u/s 110(3) were to be seen as permitting a "proper officer" to neither take the next logical step of proceeding with and completing his enquiries/investigation nor return the seized articles/goods to the person from whom they have been seized, then it would render the provision arbitrary and susceptible to misuse. Section 110(3) of the Act by necessary implication requires the power there under to be exercised in the course of the investigation by an officer and to act as an aid to the in the continuation and completion of the investigation within a reasonable period thereafter. It implies that as part of the investigation the officer will have to make enquiry and form an opinion whether the goods or things seized by him are relevant to the investigation. For instance in the present case, the officer is expected to have by now made enquiries to satisfy himself that the amount in the petitioner's bank accounts has a causal connection with the illegal exports allegedly made by the petitioner in contravention of the Act. Also, if the officer forms such opinion it would have to be reduced to writing and the Petitioner would be required to be confronted with it by issuing to it a show cause notice. And again, all of this has to happen within a reasonable time. Merely because Section 110(3) does not itself prescribe a time limit cannot possibly mean that it is open-ended to permit the Respondents to continue to keep the goods and things confiscated for an indefinite time period

without any further step being taken during the course of such investigation.

9. Now we turn to Section 121 of the Act which reads as under:

Section 121 Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods, the sale-proceeds thereof shall be liable to confiscation.

The above provision presupposes at least a prima facie determination prior to the confiscation that the goods which have been sold are indeed "smuggled goods" and that the bank accounts frozen contain the sale proceeds of such smuggled goods. Any other interpretation would encourage a misuse of the power to indefinitely keep the accounts of a person frozen on the mere suspicion that they contain the sale proceeds of goods which are again only suspected of being smuggled goods. To justify the continued freezing of a bank account on this basis, the authorities must show that there is some material on record, which has been put to the person in whose name the account stands, which shows the causal link between the monies in the accounts and the sale proceeds of goods which are believed to be smuggled. This can happen only if a show cause notice is issued to the person whose goods and things including bank accounts have been seized and such person is afforded an opportunity of giving an explanation.

10. In response to a query from the Court as to what steps have been taken by the Respondents to issue a show cause notice to the petitioner, learned Counsel for the Respondents candidly states that investigations are still in progress and despite over four years having elapsed since the raid on the petitioner's premises, no show cause notice has yet been issued. He states on instructions that investigations are expected to conclude shortly and it is possible that a show cause notice may be issued to the Petitioner in the near future. He accordingly submits that the bank accounts should not be de-freezed at this point in time.

11. This Court is unable to accept the above submission of the learned Counsel for the Respondents. The fact that even now the Respondents are unable to commit themselves to a definite time period within which they will complete the investigations pursuant to a seizure made more than four years ago is itself sufficient to indicate the unreasonableness of the action. If the Respondent public authority, which exercises extensive statutory and coercive powers is unable to ensure that the investigation is completed within a reasonable period, it would be unfair to make the Petitioner, whose bank accounts remain frozen for over four years to wait indefinitely. There must be some convincing explanation and legal justification for the Respondents continuing to keep the Petitioner's bank account frozen particularly since they have returned all other seized goods and things after the detention order was quashed. There is none offered by the Respondents.

12. It was submitted that the petitioner did not turn up for inquiry despite being issued summons several times. He was convicted by the learned Metropolitan Magistrate (MM) on 11.12.2006 for the offences under Sections 172, 174 and 175 IPC. In the rejoinder, while denying that the sole proprietor of the petitioner

disobeyed any summons, it is pointed out that on the dates he was summoned he was under preventive detention. The learned MM held him guilty because he had by then already undergone the maximum punishment prescribed for those offences. The undisputed fact is that for over four years now the investigation is still incomplete. Till date there is no show cause notice issued, no criminal case filed and no arrest made. In the circumstances, this Court finds, even with reference to Sections 110(3) and 121 of the Act, no legal justification for the continued freezing of the Petitioner's accounts. The allegation in para 10 of the counter affidavit that "there is a proclivity" on the part of the petitioner (who is also labelled without legal basis as "an accused") to "not only evade duties, but also dishonour the legal processes that have been initiated" is not based on any material that has been placed on record or disclosed to the petitioner even after four years after the seizure. Such surmise to justify the continued freezing of the petitioner's bank accounts cannot therefore be countenanced.

13. Consequently, it is directed that the Respondents will de-freeze the Petitioner's bank accounts forthwith by passing appropriate orders and issuing necessary instructions to the banks concerned. The writ petition is accordingly allowed with costs of Rs. 5,000/- which will be paid by the Respondents to the Petitioner within four weeks.