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(2019) 05 ATPMLA CK 0007

In the Appellate Tribunal Under Prevention Of Money Laundering Act

Case No : FPA-PMLA-2409/DLI/2018

Ramji Natarajan — APPELLANT

Vs

Joint Director, Directorate Of Enforcement, Delhi — RESPONDENT

Date of Decision : 13-05-2019

Acts Referred:

Prevention Of Money Laundering Act, 2002 — Section 8(1), 8(3), 8(3)(a), 17, 17(1), 17(4), 18, 19, 20, 20(1), 20(2), 20(3), 21, 21(4), 26, 50(2), 50(3)

Citation : (2019) 05 ATPMLA CK 0007

Hon'ble Judges : Manmohan Singh, J;G. C. Mishra, Acting Chairman

Bench : Division Bench

Advocate : Giriraj Subramanium, Sonia Mathu, Amit Mahajan, Nitesh Rana, Naveen Kr. Matta, Noor Rampal, A.R. Aditya

Final Decision : Allowed

Judgement

FPA-PMLA-2409/DLI/2018

1. The present appeal has been filed under section 26 of the Prevention of Money Laundering Act, 2002 against the Order dated 22.05.2018 passed

by the Adjudicating Authority under the Prevention of Money Laundering Act, 2002 in OA-154/2017 related to ECIR No. ECIR/05/DZ/2012 allowing

the application filed by the Enforcement Directorate - Respondent and allowing the Respondent to retain the documents/digital devices till finalization

of the case.

2. The appellant operates in the travel and tourism industry by the name of M/s. Travel Masters India Pvt. Ltd which was incorporated in 1991 and

operates in several cities in India.

a) On 15.03.2007, the respondent issued a summon under section 50(2) and 50(3) of the Prevention of Money Laundering Act, 2002 informing the

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appellant that they were making an investigation in ECIR/05/DZ/2012 and the presence of the appellant was considered necessary on 03.04.2017 for

the purposes of the said investigation. Thereafter, the Counsel for the appellant vide letter dated 31.03.2017 requested the respondent to inform the

appellant in writing as to the assumption of jurisdiction of the respondent over the appellant under the provisions of the PMLA, 2002.

b) The respondent issued another similar summon dated 13.04.2017 to the appellant under section 50(2) and 50(3) of the Prevention of Money

Laundering Act, 2002 informing the appellant that the respondent is making an investigation in ECIR/05/DZ/2012 and that the presence of respondent

was considered necessary on 25.04.2017 for the purposes of the said investigation. Thereafter, on 21.04.2017, the Counsel for the appellant informed

the respondent that the respondent was unable to comply with the summons dated 13.04.2017 as the appellant was travelling abroad on a business trip.

The Counsel once again requested the respondent to inform them of the details case that was being investigated and to clarify on the respondentâ??s

assumption of jurisdiction over the appellant under the provisions of the PMLA, 2002, since the ECIR/05/DZ/2012.

b) On 02.06.2017, the respondent once again issued a similar summon to the appellant under section 50(2) and 50(3) of the Prevention of Money

Laundering Act, 2002 informing the appellant that he was making an Â investigation in ECIR/05/DZ/2012 and that the presence of the appellant was

considered necessary on 15.06.2017 for the purposes of the said investigation. Thereafter, on 14.06.2017, the Counsel for the appellant once again

requested the respondent to inform them of the details case that was being investigated and to clarify on the respondentâ??s assumption of

jurisdiction over the appellant under the provisions of the PMLA, 2002 in the ECIR/05/DZ/2012.

3. On 01.12.2017, pursuant to a search warrant issued by the Additional Director, Headquarters Office, Directorate of Enforcement, the respondent

conducted search and seizure operations under section 17 of the Prevention of Money Laundering Act, 2002 in the above-mentioned premises of the

appellant. On the date of search, the appellant was informed that the search and seizure operations were being conducted as part of the ongoing

investigation of the applicant in ECIR/05/DZ/2012.

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4. Pursuant to the search and seizure operations, the respondent recovered and seized following documents and electronic devices:-

i) Box file marked as â??Aâ?? containing pages from 1 to 126.

ii) Box file marked as â??Bâ?? containing pages from 1 to 561.

iii) Box file marked as â??Câ?? containing pages from 1 to 557.

iv) Green file cover containing loose documents marked as â??Dâ?? containing pages from 1-527.

v) Box file marked as â??Eâ?? containing pages from 1 to 267.

vi) Box file marked as â??Fâ?? containing pages from 1 to 345.

vii) 2 server hard disks having details as mentioned in the â??Digital Evidence Collection Formâ??.

viii) 1 Apple â?" I Phone (black) having details as mentioned in the â??Digital Evidence Collection Formâ??.

ix) 2 Hard Disks contained in CPU having details as mentioned in â??Digital Evidence Collection Form.â??

5. Thereafter, the respondent filed an application dated 19.12.2017 before the Adjudicating Authority under the Prevention of Money Laundering Act,

2002. The respondent through the said application sought retention of such seized documents and electronic devices under section 8(3) of the PMLA.

6. The appellant filed its reply to the Original Application, in question.

7. Vide order dated 22.05.2018, the Adjudicating Authority allowed the application filed by the Enforcement Directorate, Respondent and also allowed

the Respondent to retain the documents/digital devices till finalisation of the case. The said order is challenged before us.

8. The appellant is neither accused in FIR, nor in ECIR, nor has he been charge sheeted in any of the offences. The respondent has not produced any

material having any relation, link or nexus between the appellant and the Sterling Biotech Ltd. in its OA, nor in the reply filed to the present appeal.

9. In the entire Original Application, there is no mention of any proceeds of crime being generated or being in the possession of the appellant or that

the appellant is involved in the concealment of such proceeds of crime and portraying the same as untained money.

10. The respondent has not placed on record any material that the property seized by the respondent is a property involved in money laundering as

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there is no allegation qua the generation of proceeds of crime or the appellant is involved for the offence of money laundering.

11. It is evident from the reason to believe that the notice under section 8(1) was issued on filing of application under section 17(4) of the Act. It is

stated in the notice that the investigation is still going on. The appellant was called upon as per reason to belief to indicate the source of income earning

or assets out of which the appellant has acquired the properties seized.

12. As per appellant, the total value of seized property is just one lac of rupees.

13. In the appeal, it is stated that the respondent has failed to point out the involvement of the appellant or connected with any manner with the

proceed of crime. The appellant is doing its business for the last 25 years. His capital base is rupees six crores, now, he is being asked to indicate the

source of these seizure of paper and articles which are worth just one lac of rupees.

14. Section 17 mandates that the Investigating Agency must record its reasons to believe in writing that the property being seized is involved in the

offence of money laundering or is related to a crime. No such reason to believe have been recorded or forwarded to the Adjudicating Authority or

provided to the appellant at any stage during the proceedings.

15. Section 17 of PMLA, 2002 reads as under:

â??17 Search and seizure. â?"(1) Where [the Director or any other officer not below the rank of Deputy Director authorised by him for the

purposes of this section,] on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in

writing) that any person â?

(i) has committed any act which constitutes money-laundering, or

(ii) is in possession of any proceeds of crime involved in money-laundering, or

(iii) is in possession of any records relating to money-laundering, (or)

(iv) is in possession of any property related to crime]

then, subject to the rules made in this behalf, he may authorize any officer subordinate to him to -

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime

are kept;

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(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where

the keys thereof are not available;

(c) seize any record or property found as a result of such search;

(d) place marks of identification on such record or [property, if required or] make or cause to be made extracts or copies therefrom;

(e) make a note or an inventory of such record or property;

(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for

the purposes of any investigation under this Act:

[Provided that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under

section 157 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person, authorised to investigate the

offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in

cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an

officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or

equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the

Central Government, by notification, for this purpose.]

[(1A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze

such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making

such order, and a copy of such order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of Section 8 or Section 58B or sub-Section (2A) of

Section 60, it becomes practical to seize a frozen property, the officer authorised under sub-Section (1) may seize such property.]

(2) The authority, who has been authorized under sub-section(1) shall, immediately after search and seizure [or upon issuance of a freezing

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order] forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating

Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reason and material

for such period, as may be prescribed.

(3) Where an authority upon information obtained during survey under section 16, is satisfied that an evidence shall be or is likely to be

concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is

located and seize that evidence.

Provided that no authorization referred to in sub-section (1) shall be required for search under this sub-section.

(4) The authority seizing any record or property under sub-Section (1) or freezing any record or property under sub-Section (1A) shall,

within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record

or property seized under sub-Section (1) or for continuation of the order of freezing served under sub-Section (1A), before the Adjudicating

Authority.].

16. Section 18 of PMLA, 2002 reads as under:

â??18. Search of persons. â?

(1) If an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe (the reason for

such belief to be recorded in writing) that any person has secreted about his person or in anything under his possession, ownership or

control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act, he may search that person

and seize such record or property which may be useful for or relevant to any proceedings under this Act:

[Provided that no search of any person shall be made unless, in relation to the scheduled offence, a report has been forwarded to a

Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to

investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case

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may be.]

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure, forward a copy of the reasons

so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the

manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-four hours to the

nearest gazetted officer, superior in rank to him, or a Magistrate:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey undertaken to take such person to the nearest

gazetted officer, superior in rank to him, or Magistrate's Court.

(4) If the requisition under sub-section (3) is made, the authority shall not detain the person for more than twenty-four hours prior to taking

him before the Gazetted Officer superior in rank to him, or the Magistrate referred to in that sub-section:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of detention to the office of the

Gazetted Officer, superior in rank to him, or the Magistrate's Court.

(5) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search,

forthwith discharge such person but otherwise shall direct that search be made.

(6) Before making the search under sub-section (1) or sub-section (5) the authority shall call upon two or more persons to attend and witness

the search, and the search shall be made in the presence of such persons.

(7) The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the

list.

(8) No female shall be searched by any one except a female.

(9) The Authority shall record the statement of the person searched under sub-section (1) or sub-section (5) in respect of the records or

proceeds of crime found or seized in the course of the search:18 [***]

(10) The authority seizing any record or property under sub-section (1) shall,

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within a period of thirty days from such seizure, file an

application requesting for retention of such record or property, before the Adjudicating Authority.

17. Sub-section (1), (2) and (3) of Section 20 read as under:-

20. Retention of property.â?

(1) Where any property has been seized under section 17 or section 18 or frozen under sub-Section (1A) of Section 17 and the officer

authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be

recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8, such property

may, if seized be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day

on which such property was seized or frozen, as the case may be.

(2) The officer authorized by the Director shall, immediately after he has passed an order for retention or continuation of freezing of the

property for purposes of adjudication under section 8, forward a copy of the order along with the material in his possession, referred to in

sub-section (1), to the Adjudicating Authority, in a sealed cover, in the manner as may be prescribed and such Adjudicating Authority shall

keep such order and material for such period as may be prescribed.

(3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized

or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property

beyond the said period.

18. Section 21 of PMLA reads as under:-

â??21. Retention of records. â?

(1) Where any records have been seized, under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the Investigating

Officer or any other officer authorised by the Director in this behalf has reason to believe that any of such records are required to be

retained for any inquiry under this Act, such records may if seized, be retained or if frozen, may continue to remain frozen, for a period not

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exceeding one hundred and eighty days from the day on which such records were seized or frozen, as the case may be.

(2) The person, from whom records seized or frozen, shall be entitled to obtain copies of records.

(3) On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were

seized or whose records were ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such

records beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such records beyond the period specified in

sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 8.

(5) After passing of an order of confiscation [or release under sub-section

(5) or sub-section (6) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60] , the Adjudicating Authority shall direct

the release of the records to the person from whom such records were seized.

(6) Where an order releasing the records has been made by the Court [Adjudicating Authority under section (5) of section 21] the Director

or any other officer authorised by him in this behalf may withhold the release of any such record for a period of ninety days from the date of

(receipt of] such order, if he is of the opinion that such record is relevant for the appeal proceedings under this Act.]

19. It is clear from the reading of Sections 17 to 21 that outer limit upto the date for deciding the application for retention of property within the

meaning of sub-section 4 of Section 21 is 180 days from the date of seizure of any property or records. The said period is not extendable.

20. The person concerned/aggrieved party of such order, is entitled to file the appeal under Section 26 of the Act. The same shall be heard and after

giving an opportunity of being heard, the appellant Tribunal shall pass the order either to confirm the order of retention or to modify or setting aside the

same.

21. Where the Adjudicating Authority decides by an order confirm the retention under Sub-section (1) of Section 17 or Section 18 for the purpose of

continuation during investigation for a period not exceeding ninety days under

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this Act before the Competent Court, or under the corresponding law of

any other countries as the case may be under Sub-section (3) (a) of Section 8 may take necessary action within the time prescribed. In failure to do so

under this Act, all the proceedings, seizures/frozen under Section 17 would be lapsed ipso facto.

22. It is settled law that if a particular thing is to be done in a particular manner, it must be done in that manner only and none other. Reliance in this

regard is also placed on a judgements of Honâ??ble Supreme Court in the cases of Dipak Babaria and another vs. State of Gujarat 2014 (3) SCC

502 and J. Jayalalitha & Anr vs State of Karnataka & Ors 2014 (2) SCC 401.

23. The provisions of section 8 (3) (a) provides that the attachment or retention of property or record seized shall continue during the investigation for

a period not exceeding ninety days.

24. It is an admitted position that no prosecution complaint has been filed against the appellant herein. The properties and records of the appellant

were seized only for the purpose of investigation. The period of 90 days as prescribed under section 8 (3) (a) has already expired. No prosecution

complaint has been filed by the respondent against the appellant. The said fact has been admitted by the learned counsel for the respondent.

25. Thus, in view of the above, the appeal is liable to be allowed in view of the mandatory provision as the retention order lapses. The properties

retained by the respondent shall be returned to the appellant within next two weeks from today. In the interest of justice, equity and fair play, the

respondent is allowed to retain the photocopies of records seized/print of the electronic items and copy of hard disks, if so required, before returning

the same to the appellant. The counsel for the respondent states that the respondent may rely upon the documents and materials before the Special

Court. This Tribunal does not express any opinion in this regard, the same, if necessary, may be relied upon in accordance with law.

26. No costs.

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