IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 19554 OF 2023

Mayur Enterprises ...Petitioner
Versus
The Union of India & Ors. ...Respondents

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Dr. Sujay Kantawala, a/w. Mr. Anupam Dighe, Ms. Chandni Tanna and Mr. Prathamesh Chavan, i/b. India Law Alliance, for the Petitioner.

Mr. Vijay H. Kantharia, a/w. Mr. Ram Ochani, for Respondent Nos.1 & 2.

CORAM : G. S. KULKARNI & JITENDRA JAIN, JJ.

DATE : 8 AUGUST, 2023

Oral Order : (Per Jitendra Jain, J.)

1. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:-

"*a. That this Hon'ble Court be pleased to hold and declare;*

i. that freezing of the Petitioner's Savings Account No. 809510264 and Current Account No.6010527667 held with Respondent No.2 is bad in law;

ii. that the Respondent No.2 does not have to the power to the seal the godown premises of the Petitioner;

b. That this Hon'ble Court be pleased to issue a Writ of Mandamus or Writ in the nature of mandamus or any other appropriate Writ, Order or Direction directing Respondents, their servants, subordinates and agents:

i. To unfreeze the Petitioner's bank accounts i.e. Savings Account No.809510264 and Current Account No. 6010527667 held with Respondent No.3 bank;

ii. To unseal the Petitioner's godown Premises located at Plot No.497, Road No.4, Steel Market, Kalamboli 410213;"

2. **Brief facts** :- The petitioner is a proprietorship concern engaged in the business of buying and selling of CRGO sheets, scraps, etc. in local market.

3. The petitioner, in the course of his business, entered into an agreement with one Pacific Powertech Solutions (Pacific) for purchase of CRGO Strips. The petitioner made market enquiries and found that Pacific had purchased the said goods from one GSD Technology, who, in turn, had purchased the goods from one M/s ST Electricals, who is the actual importer of the goods. M/s ST Electricals is located in Jaipur. The petitioner purchased these goods from Pacific under Invoice No. 043 dated 02.07.2023, No. 044 dated 02.07.2023, No. 045 dated 03.07.2023 and No. 046 dated 05.07.2023. The petitioner, in the course of his business, sold the abovereferred goods, which were purchased from Pacific to one Narayan Power Solutions and one Transel Engineers over the period of 4 July 2023 to 11 July

2023 under various invoices, which are annexed to the petition. The petitioner claims to be a bonafide purchaser of the goods as originally imported by M/s S. T. Electricals and cleared for home consumption.

4. Meanwhile, the Customs Authorities at Jaipur initiated proceedings against M/s ST Electricals alleging undervaluation of goods. M/s ST Electricals has challenged the said action of the authorities before the Rajasthan High Court in Writ Petition No. 10480 of 2023, which is stated to be pending. The Customs Authorities, during the investigation, found that M/s ST Electricals had sold these goods to GST Technology, who, in turn, has sold to Pacific and Pacific has sold goods to the petitioner and the petitioner has further sold these goods in the market.

5. Pursuant to the above investigation, the respondents attached the bank accounts and sealed the premises of the petitioner on the basis of communication received from the Commissioner of Customs, Jodhpur as averred by the respondents in their reply. However, no such communication is annexed to the reply. This led to the petitioner approaching this Court in the present petition against the attachment of the bank accounts and sealing of the office premises, seeking reliefs as prayed for in the petition. On 25 July 2023, this Court had passed the following order:

> *3. "As an immediate ad-interim relief, the petitioner is seeking defreezing of the Current Account No. 6010527667 contending*

that the said account is cash credit account of the petitioner and to that effect, a certificate is issued by the Branch Manager of the Indian Bank. Copy of the certificate is placed on record with an undertaking that an affidavit to that effect will also be placed on record during the course of the day and a copy of the same would also be furnished to the respondents. Such affidavit of Mr. Bhagirath Bheraram Chaudhary, Accountant of the petitioner dated 25 July, 2023 is placed on record.

4. It is submitted that it would be illegal for the respondents to freeze the cash credit account. This is also contrary to the settled principles of law. In support of such contention, reliance is placed by the petitioner on the decision of a co-ordinate Bench of this Court dated 8 July, 2010 in the case of ***M/s. Sargam Foods Pvt. Ltd. & Anr. vs. State of Maharashtra & Ors.****, in which the Division Bench referring to the judgment of learned Single Judge of the Madras High Court in the case of* ***Adam vs. Income-tax Officer*** *as also the decision of the learned Single Judge of the Karnataka High Court in case of* ***Karnataka Bank Ltd. vs. Commissioner of Commercial Taxes****, observed that the account in question being a cash credit account, in other words, a overdraft facility, the unutilised overdraft account does not render the banker a debtor in any sense and the banker is therefore not a person from whom money is due to the customer. It is further observed that where the banker lends money on an overdraft and the customer is always in debit there is no stage at which the banker is debtor to the customer, nor at any point of time at which he holds any money of the customer or the later's account. The Division Bench in making* *such observations, agreed with the view expressed in **Adam's** case (supra) and also in **Karnataka Bank Ltd.'s** case (supra) holding that the respondent therein had no authority to freeze the cash credit account and accordingly such orders were set aside. In our opinion, although the issue in such case fell under the provisions of Bombay Provincial Municipal Corporations Act, 1949 (now the Maharashtra Municipal Corporation Act), however, the principles in that regard are applicable with full force insofar as the actions taken by the customs authority are concerned.*

5. Thus, it would be necessary and in the interest of justice that an ad-interim order directing the Current Account No. 6010527667 of the petitioner to be defreezed forthwith are required to be passed. We order accordingly.

6. Insofar as the sealing of the godown premises is concerned, the petitioner has several submissions. It is his contention that the respondents would not have any authority to seal the godown premises, being immovable property. It is also contended that the godown has several materials of the petitioner and the respondent in the present case undertaking any search operations would not be concerned for the entire goods and they will be required to identify the goods on which the respondent may intend to proceed. It is thus contended that blanket action of this nature is highly prejudicial and it is also illegal and violative of the petitioner's right guaranteed under Article 19(1)(g) and Article 300A of the Constitution.

Insofar as the action of sealing of the petitioner's godown premises is concerned, we are of the prima facie opinion that the issue for the time being can be resolved by the premises being unsealed by the concerned officer of the respondent in the presence of representatives of the petitioner, which be held tomorrow (26 July, 2023) at 4 p.m. The officers of the respondent shall take inspection in respect of the material as available in the godown and sofar as any materials relevant for such search are revealed/located, they may take an appropriate position and pass appropriate orders as the law may permit. Let such exercise be undertaken so that further appropriate orders on the present petition can be passed on the adjourned date of hearing. Ordered accordingly."

6. Pursuant to the above order, Overdraft Account No.6010527667 was defreezed.

7. The respondents, thereafter, opened the seal of the petitioner's godown in the presence of the petitioner and searched the said premises. A panchanama was drawn by the respondents on 26 July 2023 at the godown of the petitioner and, as per the panchanama, following goods and documents were detained from the premises of the petitioner.

Table-A

Sr. No.	Description of Goods	Nos.
1	CRGO-SLIT COIL	31 (wooden pallets)

2	CRGO-STEEL SCRAP	29 (Wooden pallets)
3	CRGO-STEEL SCRAP	03 (wooden boxT)
4	CRGO-STEEL SCRAP	02 (metal box)

Table-B

Sr. No.	Name of the Document	No. of Pages
1	Sales invoice (alongwith e-way bills, etc.)	01-92
2	Purchase invoice (alongwith e-way bills, etc.)	01-92

8. It is in the light of these facts, we are called upon to consider prayers in the petition and the subsequent developments pursuant thereto.

9. As of now the only question, which requires to be considered by this Court is whether in the facts and circumstances of the present case, the respondents would have authority and jurisdiction to detain the goods and documents and attach the bank accounts.

10. We have heard learned counsel for the petitioner and learned counsel for the respondents. We have also perused, with the assistance of the counsel, the affidavit-in-reply of the respondents dated 31 July 2023 and the additional affidavit filed by the petitioner dated 31 July 2023.

11. **Submissions of the Petitioner:** The petitioner has contended that he has not imported the goods and that he is a bonafide purchaser in the chain of sale and purchase transaction starting from sale by M/s ST Electricals, who was the original importer. The petitioner submits that since he is not the importer of the goods, the impugned action cannot be initiated against him. The petitioner has further contended that the goods, which were purchased by him from Pacific, have been sold to Narayan Power Solutions and another and since therefore goods imported by the M/s. ST Electricals are not in his possession. Hence, there cannot be any detention of the goods, which are not the subject matter of original import by M/s. ST Electricals so that there could be a charge of non-payment of duty or for that matter evasion of duty by the petitioner. The petitioner has further submitted that there is no demand or show cause notice against him and, therefore, the attachment of the saving bank account and detention of goods is also without jurisdiction. The petitioner has, therefore, prayed that the saving bank accounts be defreezed, and the action of the respondents in detaining of the goods and documents is without jurisdiction.

12. **Submissions of the respondents:** *Per contra*, the respondents have contended that they have power to seize the goods and documents under the provisions of Section 110(1) of the Act and under the first proviso to Section 110(1) of the Act since the said goods

were voluminous in nature, they have been detained by the respondents and not seized, as contended by the petitioner. The respondents have further sought to justify their action by relying upon Sections 28, 110 (5) and 135 of the Act. It is the case of the respondents that they have power to detain the goods, as the goods, which they have detained, are of the same description though not the same goods, which were imported by M/s ST Electricals and, therefore, the impugned action is justified.

ANALYSIS

13. We may clarify that our present analysis is restricted only to the facts of the petitioner before us and in no way should be construed as expression of any views by us on any other pending proceedings.

14. At the outset, we wish to observe that as per the affidavit of the respondents dated 31 July 2023, the goods, which were imported by M/s ST Electricals, and which are subject matter of investigation by the Rajasthan authorities, are CRGO Strips / Sheets, which are imported in violation of BIS conditions. However, as per the panchanama dated 26 July 2023, the goods detained are of the description CRGO-Slit Coil and CRGO-Steel Scrap. These two goods appears to be not the same goods. In our prima facie view, the affidavit-in-reply of the respondents would militate against the case of the respondents that the goods, which are detained, are the goods, which

were originally imported by M/s ST Electricals. The respondents themselves admit in the reply that goods purchased by the petitioner, which were originally imported by M/s ST Electricals, are already sold by the petitioner. If that be so, then the said goods cannot be of the ownership of the petitioner. Therefore, the respondents are not contending that they have detained the same goods, which were imported by M/s ST Electricals, but are of similar description which matches with purchase invoice of the said similar description goods. Thus, in our view, on such admission by the respondents the impugned action of detaining goods of the petitioner, would be rendered without jurisdiction.

15. In the context in question it is necessary to note the relevant provisions of the Customs Act.

16. Section 2(14) of the Act defines "dutiable goods" to mean any goods, which are chargeable to duty and on which duty has not been paid. Section 2(15) defines "duty" to mean a duty of customs leviable under the Customs Act. Section 2(22) defines "goods" to include vessels, aircrafts, vehicles, stores, baggage, currency, negotiable instruments and any other kind of movable property. Section 2(25) defines **"imported goods"** to mean any goods brought into India from a place outside India but **does not include goods, which have been cleared for home consumption**. Section 2(26) defines **"importer"** to

mean in relation to any good at any time between their importation and the time when they are cleared for home consumption to include any owner, beneficial owner or any person holding himself out to be the importer. Section 2(34) of the Act defines "proper officer" to mean the officer of customs, who is assigned the functions by the Board or the Principal Commissioner of Customs and Customs or Commissioner of Customs.

17. Section 28 of the Act provides for recovery of duties not levied or not paid or short levied or short paid. Section 28(1)(a) provides that the proper officer shall within the time provided therein from the relevant date serve a notice on the person chargeable with the duty or interest, which has not been so levied or paid or short levied or short paid. Section 28-AAA provides for recovery of duties in certain cases and Section 28-BA provides for provisional attachment to protect revenue in certain cases, where the proper officer is of the opinion that for the purpose of protecting the interest of revenue, it is necessary so to do by order in writing attached provisionally any property belonging to the person on whom notice is served under sub-section (1) or sub-section (4) of section 28 or sub-section (3) of section 28-AAA or Sub-section (2) of Section 28-B as the case may be.

18. Section 110 of the Act provides for seizure of goods, documents and things, if the proper officer has reason to believe that any goods are liable to confiscation under this Act. Sub-section 3 of

Section 110 provides that 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.

19. The analysis of the above provisions of the Act would show that once the goods are cleared for home consumption and enter the domestic market for sale, such goods cannot be seized from the subsequent purchasers and that too if the third person against whom action is initiated has already sold the goods in open market and when there was no demand or proceedings pending for recovery of duty etc. against such third person. In the present case, the goods imported by M/s ST Electricals were initially cleared for home consumption by the said importer and the said goods have changed hands in open market and is also out of the possession of the petitioner. The respondents in their affidavit in reply have referred to the communication from Jodhpur Customs authorities dated 8 July 2023 and 12 July 2023 wherein the Jodhpur authorities have directed the respondents to seize the very goods imported by M/s ST Electricals. In the said reply, the respondents have stated that these very goods have been sold by the petitioner to Narayan Power Solutions. In our opinion, the situation would have been different if the Customs were to bring some materials to show that the goods in question were being allegedly dealt by M/s. ST Electricals in connivance with the petitioner or that the petitioner was not a bonafide third party purchaser. If this be the case, then the action of detaining the goods of the petitioner was contrary to the

revenues own stand and this would hold good for attachment of the bank account. Thus, in our view, on the facts of the present case, the impugned action in detaining the goods in question (some other goods of the petitioner) is contrary to the provisions of the Act as noted by us moreso when same is not pursuant to any recovery of pending dues of the petitioner or proceedings pending against the petitioner under the Act.

20. Section 28 of the Customs Act relied by the respondents deals with the recovery of duties not levied or not paid or short levied or short paid or erroneously refunded. We have perused the provisions of Section 28 of the Act. We wonder as to how this provision which deals with recovery of duties would empower the respondents to justify the detention of the goods under consideration and the attachment of the bank account, would be applicable in the present case. Section 28 nowhere provides for detention of the goods and attachment of the bank accounts moreso in the absence of any demand of any duty or penalty or any proceedings pending against the petitioner. Therefore the reliance placed by the respondents on the provisions of Section 28, is misconceived.

21. Section 110(1) of the Customs Act also would not assist the case of the respondents. The said provision provides that if the proper officer has reason to believe that any goods are liable to confiscation under the Act, he may seize such goods. Proviso to Section 110(1)

provides that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. There is no material to prima facie show that the goods which are detained as observed above by the respondents are the very goods which were imported by M/s ST Electricals and which were purported to be in the possession of the petitioner. Further Section 110(5) of Act empowers the proper officer during any proceedings under the Act to provisionally attach bank account to protect the interest of revenue or to prevent smuggling. We wonder as to how this provision is attracted.

22. Even otherwise, on the facts of the present case, the respondents have not referred to any material or have shown us any documents, as to how the attachment of the petitioner's bank account is to protect the interest of revenue or to prevent smuggling. Therefore, on both these counts attachment of the saving bank account cannot be held to be legal and valid. Further the provision of Section 111 provides for confiscation of improperly imported goods. Prima facie, the petitioner being a third party purchaser of the goods in question, this provision also may not be applicable.

23. We may also observe that if the case of the respondent is accepted, that the department can detain any goods in the hands of subsequent purchaser of the goods who has purchased them from the

open market, then it would lead to an anomalous and chaotic situation. Illustratively, where Mr. A who imports goods and sells them to third parties which are subject matter of various transactions leading to Mr. Z who is a third party purchaser from the open market, such goods cannot be subject matter of any detention by the Customs Authorities merely because import of goods by Mr. A is being investigated.

24. The respondents have also relied upon the provisions of Section 135 to justify their actions. Section 135 deals with evasion of duty and it provides for prosecution, if any person in relation to any goods in any way knowingly is concerned with mis-declaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with such goods which he knows or has reason to believe are liable to confiscation under section 111 or section 113, as the case may be. In our view, this provision would empower the respondents to initiate criminal action against the persons who are involved and satisfy the pre-condition under sub-section (1) of Section 135 of the Act. In the present case there is no such action which is under challenge or which is initiated and therefore justification sought to be made by the respondents of the

impugned action on this ground is also without any authority of law.

25. Further section 28 BA of the Act provides for attachment of any property of a person on whom notice under Sections 28(1), 28(4), 28-AAA(3) or 28B (2) of the Act is served. In the present case, the respondents have not served notice/s under any of these sections on the petitioner and therefore even on this account the respondents are not justified in attaching bank account and detaining the goods and documents.

26. The respondents have tried to justify their action by stating that they have acted upon communication from the Authorities at Jaipur and they themselves have not taken the action independently but at the behest of the Commissioner, Jaipur. The respondents in the affidavit-in-reply had referred to a communication from Jaipur authority but same is not annexed to the reply nor shown to us. We have not been shown by the respondents any other communication which supports their contentions that the action is taken at the behest of the communication which even otherwise the respondents could not have acted upon without applying their mind.

27. During the course of the hearing, the respondents have contended that they have not seized the goods but they have only detained the goods. On a query as to whether the department would have the powers to detain the goods in the facts of the present case, we

have not been pointed out any such provision which would empower the respondents in the facts of present case, to detain the goods.

CONCLUSION

28. In view of above discussion, the impugned action of the respondents in detaining the goods in question and attaching the bank account of the petitioner without there being any demand due from the petitioner or any proceedings pending is without jurisdiction and without any authority of law. Accordingly, we pass the following order:

ORDER

(i) We declare that the detention of the goods described in Table A of the panchanama dated 26 July 2023 is illegal and the same shall be revoked on a copy of this order being presented by the petitioner to the concerned authority;

(ii) The respondents are directed to return the documents which are mentioned in Table-B of the panchanama dated 26 July 2023;

(iii) The respondents shall defreeze Savings Account No. 809510264 of the petitioner held with Indian Bank and intimate the communication of the said defreezing to the bank;

(iv) Needless to observe that the petitioner shall co-operate with the respondents, in connection with proceedings against M/s ST Electricals is concerned;

(v) The petition is allowed in terms of the above order. No order as to costs.

29. We clarify that the observations as made by us are in the context of the present proceedings.

[JITENDRA JAIN, J.] **[G.S. KULKARNI, J.]**