

2004-(BO1)-GJX-0396-BOM

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Veritas Exports

Vs.

Union Of India & Ors.

Court :

Decided On :

June 09, 2004

Equivalent Citation(s) :

2004-(063)-RLT-0347-BOM, 2005-(184)-ELT-0341-BOM

Judge(s) :

R M S Khandeparkar, Rajiv S Mohite

Judgment :

VERITAS EXPORTS v. UNION OF INDIA & ORS.

Criminal Writ Petition No. 1531 of 1998, dated June 9, 2004.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Counsel : S/Shri Sujay N. Kantawala, Mr. Vivek N. Kantawala - Petitioners.

Shri J. C. Satpute - Respondent.

Per Khandeparkar, J. :

Heard, Perused the record.

The short point for consideration which arises in the matter is whether the bank accounts of the petitioners which were freezed by the respondents can be allowed to remain in the same condition i.e. indefinitely freezed by the respondents without compliance of the provisions of law contained in Section 124 r/w. 110 of the Customs Act, 1962, (hereinafter called as "the said Act").

Few facts relevant for the decision in the matter are that on or about 7th September, 1996 the petitioners premises were searched by the officers from the Customs Department and various goods including the documents pertaining to the bank accounts of the petitioners which included those of the Account No. 22021 in Bank of India, Breach Candy Branch at Mumbai, Account No. 1991 in Indian Overseas Bank, Nariman Point Branch, Mumbai and Account No. 74638 of Bank of Baroda, Clock Tower Branch at Ludhiana were seized by them. Consequent to the seizure of the documents, various statements were recorded and the said Bank accounts were ordered to be frozen. In the year 1997, as the petitioners were to receive certain amount in the course of their business, under letter dated 16.12.1997 issued by the Commissioner of Customs and copy of which is found at Exhibit-C to the petition, permission was granted to the petitioners to forward their reimbursement claim of Rs. 65,66,200/- to the State Bank of India and then to the Reserve Bank of India subject to the amount to be credited to the petitioners account at Bank of Baroda in Ludhiana branch and accordingly the said amount was credited to the said account on or around 6.7.1998. It also appears that amount of Rs. 1,45,065.50 stood to the credit of the petitioners' account in Indian Overseas Bank at Nariman Point Branch. The petitioners by their various letters, from time to time, requested the respondents to release the said accounts and allow them to operate the said accounts and as the request was not accepted by the respondents, the present petition has been filed.

Admittedly, the amount lying in the said accounts have been frozen pursuant to the action taken by the Customs Department subsequent to the search of the petitioners premises on 7th September, 1996. Consequent to the notice issued to the respondents in relation to the petition, the affidavits, one at the time of the admission and other after issuance of Rule came to be filed on behalf of the respondents and both these affidavits disclose that the Bank accounts were frozen as a precautionary measure. Indeed, the affidavit dated 23.6.1999 filed by Umakant G. Kulkarni, Dy. Commissioner of Customs (Prev.) clearly discloses a statement to the fact I say that since the investigation is not yet completed, issuance of show cause notice/charge sheet does not arise. I say that the Bank accounts of the petitioners were frozen as a precautionary measure since the export remittances received by the petitioner were credited in his bank account.

In terms of section 110(1) of the said Act, the Custom authorities are entitled to seize the goods liable to be confiscated and the goods include currency in terms of definition of the term goods in section 2(22) of the said Act. Sub-section (1) of Section 110 provides that if the proper officer has reason to believe that any goods are liable to confiscation under the said Act, he may seize such goods. However, sub-section (2) of Section 110 provides that where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were

seized. Section 124 speaks about issuance of show cause notice before confiscation of goods and it provides that :-

"No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person - (a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty; (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the ground of confiscation or imposition of penalty mentioned therein; and (c) is given a reasonable opportunity of being heard in the matter."

Obviously once the goods are seized in exercise of powers under Section 110(1) of the said Act, it is necessary for the Customs authority to take, appropriate steps for confiscation of goods within a period of 6 months from the date of seizure in accordance with the provisions contained in Section 124(c) of the said Act and in case no such steps are taken then to proceed in accordance with sub-section 2 of Section 110 of the said Act. Undoubtedly, proviso to sub-section 2 of Section 110 provides that the period of 6 months may be extended by the Commissioner of Customs, on sufficient cause being shown, for a period not exceeding six months. We are fully aware that in a given case where the delay is occurred on account of acts on the part of owners of the goods then such period can even be excluded from the period of six months as was held by the Apex Court in the case of Poolpandi v. Superintendent, Central Excise reported in AIR 1992 Supreme Court 1795. Nevertheless, the authorities under the said Act have no power to continue to keep the goods seized under Section 110(1) after the expiry of period of 6 months unless they follow the procedure prescribed under Section 124 and/or 110 (2) of the said Act, as the facts and the circumstances of the case may warrant. The provisions of law contained in section 110 read with section 124 are to be followed by the authorities and the goods cannot be detained without complying the said provisions of law. The law in this regard is well settled by the decision of the Apex Court in Harbans Lal v. Collector of Central Excise & Customs reported in 1993 (67) ELT 20 (SC) read with I. J. Rao, Asstt. Collector of Customs & Ors. v. Bibhuti Bhushan Bagh & Anr. reported in (1989) 3 Supreme Court Cases 202 and The Asstt. Collector of Customs v. Charan Das Malhotra reported in 1971 (1) Supreme Court Cases 697 as well as M/s. Lokenath Tolaram, Etc. v. B.N. Rangwani and Ors. reported in (1974) 3 Supreme Court Cases 575.

In the case in hand, though the respondents have filed two affidavits in the course of the hearing of the matter, the same nowhere discloses any action having been taken by the respondents in accordance with the provisions of law contained in Section 124 or 110(2) in relation to the goods in question i.e. the said bank accounts which have been frozen by the respondents. Apart from giving a lame excuse that the investigation is not yet complete and the freezing has been done as a precautionary measure,

no justification has been given for not taking steps in accordance with the provisions contained in Section 110(2) and the proviso thereto, in case the petitioners have not been able to take appropriate steps in accordance with Section 124. It is to be noted that the accounts have remained frozen atleast from 1998 onwards and till this date there has been no action on the part of the respondents in accordance with the provisions of law. There is also no explanation for such inaction on the part of the respondents. In spite of repeated query being made, the Advocate for the respondents, apart from submitting that the said amount is seized for other investigation either under the Income Tax Act or some other Act and that too without making goods by producing documentary evidence in that regard, no explanation is forthcoming to justify continuation of the accounts in frozen condition. In the circumstances, therefore, we are left with no alternative than to allow the petition and to order the release of the accounts in accordance with the prayer clause-b (i) of the petition.

The petition therefore, succeeds and the same is allowed in terms of prayer clause-b (i) and the rule is made absolute accordingly with or order as to costs.

At this stage, learned Advocate for the respondents prays for stay of the order passed today. We find no justification to stay the order passed today and request is rejected.

Parties to act on an ordinary copy of this order duly authenticated by the Personal Secretary/Sherestadar of this court as a true copy.