

IN THE HIGH COURT OF BOMBAY
Writ Petition No.6245 of 2019
NOBAL JEWELS PVT LTD AND ANOTHER
Vs
UNION OF INDIA AND OTHERS

M S Sanklecha & M S Sonak, JJ

Dated: June 19, 2019

Appellant Rep by: Mr Prakash Shah a/w Mr Arun Jain I/b PDS Legal
Respondent Rep by: Mr J B Mishra

Cus - The challenge in this petition is to the letters issued by DRI to the IDBI Bank Ltd and Kotak Mahindra Bank Ltd virtually freezing the specified account maintained by Petitioner by allowing debit operation subject to the maintenance of minimum balance in the Accounts - The Petitioner is stated to be in the business of import/export trading of rough and polish diamonds - The issue raised herein stands concluded by the decision of this Court in *Rajen Shinde - 2015-TIOL-2937-HC-MUM-CUS* and *Rajaram Purohit - 2018-TIOL-591-HC-MUM-CUS* - In *Rajen Shinde*, the Court observed that notwithstanding the seriousness of the allegations made by Revenue, the attachment of the Petitioner's bank account will bring to halt the Petitioner business - In *Hinel Impex*, in virtually identical circumstances, this Court interfered with the communication which operated as Debit freeze to the extent of the amount of Rs. 1,04,765/- in the bank account - Applying the reasoning in the aforesaid decisions, the impugned communications dated 2nd November, 2018 are set aside and the rule made absolute in terms of prayer clause (a) and (b) of the Petition - In the present case, court was considering imposition of costs against the Respondents because despite the decision of this Court in virtually identical circumstances, the Respondents persist in ordering Debit freezing without issuing of any SCN or completing investigations within the reasonable period - The Respondent are directed to issue consequential direction to the IDBI Bank Ltd. and Kotak Mahindra Bank Ltd. further intimating the bank that the impugned communications have been set aside: HC

Writ petition disposed of

Case laws cited:

Rajendra Vitthal Shinde vs. Union of India - 2015-TIOL-2937-HC-MUM-CUS... Para 8

Rajuram Purohit vs. Union of India - 2018-TIOL-591-HC-MUM-CUS... Para 8

Hinal Impex LLP vs. Union of India - 2019 = 2019-TIOL-1280-HC-MUM-CUS... Para 8

JUDGEMENT

Heard learned counsel for the parties.

2. Rule.

3. With the consent of and at the request of learned counsel for the parties rule is made returnable forthwith.

4. The challenge in this Petition is to the letters dated 2nd November, 2018 issued by the Sr. Intelligence Officer, Directorate of Revenue Intelligence to the IDBI Bank Ltd and Kotak Mahindra Bank Ltd virtually freezing the specified account maintained by the Petitioner to the extent of Rs. 18,32,528.38/- and Rs. 14,31,525/- respectively by allowing debit operation subject to the maintenance of the above minimum balance in the Accounts. The two communications both dated 2nd November, 2018 shall hereinafter referred to as "impugned communications".

5. The Petitioner No. 1 is stated to be in the business of import/export trading of rough and polish diamonds. It is the case of the Petitioner that in the course of purported investigation under file No. DRI/MZU/D/INT/2018, communication dated 11th July, 2018 came to be addressed to the aforesaid two banks restraining the said two banks from allowing the Petitioner to undertake Debit operations in their respective accounts. Even the copies of such communication were not marked to the Petitioner. Upon receipt of such copies from the two banks, the Petitioners addressed letters dated 25th July, 2018 and 9th October, 2018 calling upon the Respondents to withdraw the communication which had the effect of virtually freezing the bank account of the Petitioner. The Petitioner in the said letters made reference to various judicial precedents on the issue.

6. Since no action was taken by the Respondents, the authorized representative of the Petitioners instituted Writ Petition No. 10052 of 2018 but by order dated 26th September, 2018, this Court permitted the withdrawal of the said Petition by granting liberty to file fresh Petition in the name of the Company whose bank accounts were frozen.

7. Thereafter, the impugned communications came to be issued by the Respondents purporting to allow Debit operation subject to maintenance of minimum balance as aforesaid in the two accounts. It is the case of the Petitioners that in fact this amounts to freezing of bank account at least to the extent of maintenance of minimum balance amount. The Petitioner addressed yet another letter dated 22nd January, 2019 demanding the withdrawal of the impugned communications. However, despite this demand for justice, the Respondents failed to withdraw the impugned communication, the Petitioner have instituted the present Petition.

8. The record indicates that till date neither any show cause notice has been issued to the Petitioners nor any order of assessment been served upon the Petitioners. In substantially similar circumstances, this Court in *Rajendra Vitthal Shinde vs. Union of India*, 2016 (332) ELT 699 = **2015-TIOL-2937-HC-MUM-CUS** and *Rajuram Purohit vs. Union of India*, 2018 (361) ELT 48 = **2018-TIOL-591-HC-MUM-CUS** has set aside the similar communications which had effect of freezing the bank account at least to the extent of the minimum amount directed to be maintained in the said accounts. Virtually, in identical circumstances, this Court in the case of *Hinal Impex LLP vs. Union of India* (Writ Petition No. 12024 of 2018) decided on 14th June, 2019 = **2019-TIOL-1280-HC-MUM-CUS** set aside the communication ordering Debit freezing in

respect of specified amount. According to us, the issue raised in the present Petition are squarely covered by these decisions and on the basis of reasoning in the said decisions, the impugned communication deserve to be set aside.

9. Mr. J.B. Mishra, learned counsel for the Respondents even in the present case seeks to defend the impugned communications by pointing out that the initial order of Debit freezing was modified and now Debit operation are permitted subject to maintenance of minimum balance of Rs. 18,32,528.38/- and Rs. 14,31,525/- in IDBI Bank and Kotak Bank Ltd respectively. He submits that the investigation are on and it is possible that show cause notices will be issued at an early date. He submits that the minimum balance which the impugned communications referred to represents the amounts which the Petitioner will ultimately have to pay the Respondents in regard to the confiscated goods. For these reasons, he submits that there is no case made out to warrant interference in the impugned communications.

10. We find that, the issue raised herein stands concluded by the decision of this Court in Rajen Shinde (supra) and Rajaram Purohit (supra). In fact, in the case of Rajaram Purohit (supra), an identical submission as made before us by the Revenue, was made and after taking into account the submission, this Court has observed as under:

We have noticed in this case that mere allegations have resulted in a drastic action. There are allegations against the petitioner of having smuggled gold bars into India. It is alleged that by ostensibly carrying on airconditioners' and television sets' trading activity, the petitioner together with Amrut Purohit is regularly smuggling the goods bars by concealing them in airconditioners. If it is a serious allegations and made on oath before us, then, least we expected that by now a show cause notice to be issued, the petitioner's reply called for, an opportunity of personal hearing and an order of adjudication. Leave alone any adjudication order till date, no show cause notice is also issued to the Petitioner. The Revenue prays for time to issue such a notice. We do not see how in these circumstances the Revenue justifies this act and prayed that bank account may be continued under attachment and then within a time frame show cause notice will be issued. We do not see how we can freeze a bank account or not allow the petitioner to deal with it until the show cause notice is issued and final orders are passed thereon. That would mean we secure for the Revenue, the amount due and payable which is yet to be adjudicated upon by Revenue. In these circumstances and going by factual allegations, that we do not think that the impugned communication can be sustained. We accordingly quash and set the impugned communication of bank. The writ petition is allowed with no order as to costs. We, however, clarify that our order does not mean that Revenue cannot proceed to recover the amount from the petitioner as also attach the bank account in future. All such actions can be taken strictly in accordance with law."

11. In Rajen Shinde (supra), the Court observed that notwithstanding the seriousness of the allegations made by the Revenue, the attachment of the Petitioner's bank account will bring to halt the Petitioner business. In Hinel Impex (supra) in virtually identical circumstances, this Court interfered with the communication which operated as Debit freeze to the extent of the amount of Rs. 1,04,765/- in the bank account.

12. Applying the aforesaid principles as well as the reasoning in the aforesaid decisions, we quash and set aside the impugned communications dated 2nd November, 2018 and make the rule absolute in terms of prayer clause (a) and (b) of the Petition.

13. In the present case we were considering imposition of costs against the Respondents because despite the decision of this Court in virtually identical circumstances, the Respondents persist in ordering Debit freezing without issuing of any show cause notice or completing investigations within the reasonable period. However, on this occasion, we refrain from imposition of any costs by expressing the hope that at least in future the Respondents will abide by the decision of this Court in such matters.

14. The Respondent are directed to issue consequential direction to the IDBI Bank Ltd. and Kotak Mahindra Bank Ltd. further intimating the bank that the impugned communications have been set aside.