

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 04TH DAY OF NOVEMBER 2020 / 13TH KARTHIKA, 1942

WP(C).No.8432 OF 2020(D)

PETITIONER/S:

GLONIA IMPEX,
FLR 4, 71, POPULAR ARCADE, TATA ROAD NO.1, NEAR ROXY
CINEMA, OPERA HOUSE, MUMBAI - 400 004, REPRESENTED BY
ITS SOLE PROPRIETOR HITESH RAMESH DURGAWALE.

BY ADVS.
SRI.A.RANJITH NARAYANAN
SMT.A.SIMI

RESPONDENT/S:

- 1 THE ASSISTANT COMMISSIONER(SIIB),
OFFICE OF COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE,
COCHIN - 682 009.
- 2 THE COMMISSIONER OF CUSTOMS,
CENTRAL BOARD OF INDIRECT TAXES AND REVENUE, CUSTOMS
HOUSE, COCHIN - 682 009.
- 3 THE UNION OF INDIA,
REPRESENTED BY SECRETARY, GOVERNMENT OF INDIA,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, PIN - 110
001.
- 4 LAKSHMI VILAS BANK,
REPRESENTED BY ITS MANAGER, MUMBAI FORT BENCH 104,
MUMBAI SAMACHAR MARG, MUMBAI, PIN - 400 001.

R1-2 BY ADV. SRI.B.RAJESH (KOTTAYAM)
R3 BY ADV. MR.P.R.AJITH KUMAR, CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
04.11.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner who is stated to be a supplier of diamonds, and a registered dealer under the Goods and Service Tax Act, within the jurisdiction of Mumbai, states that he had supplied diamonds to M/s. Nebal Tradings during the period 2017-18 and 2018-19 and the said transaction was duly declared in the GST return filed by the petitioner and the appropriate tax also paid. It is his specific case that no investigation is pending against him and no summons or notice has been served on him till date, either by the customs authorities or by the GST authority. In the meanwhile, however, by Ext.P1 communication, the 1st respondent issued an instruction to the Banker of the petitioner to freeze its Bank account on the nebulous ground that an entity by name Nebal Trading had transferred certain amounts to the petitioner's account. The relief sought for in the writ petition is to quash Ext.P1 order and to lift the attachment over the Bank account of the petitioner, in as much as, it is not pursuant to any proceedings that were initiated against him.

2. Through a statement filed on behalf of the respondents 1 and 2, details of an investigation against a firm by name M/s Varma enterprises are narrated and it is averred that proceeds of alleged illegal transactions carried on by M/s Varma enterprises were channeled through M/s Nebal Trading to the petitioner concern. Save for the tracing of funds to the petitioner firm, there is no mention of any proceedings initiated against the petitioner firm or of any offence committed by petitioner firm that would necessitate an attachment of its Bank account.

3.I have heard the learned counsel appearing for the petitioner and also the learned Standing Counsel appearing for the respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that there is absolutely no basis in law for proceeding against the petitioner herein, in connection with offences alleged to have been committed by M/s Varma enterprises. The mere fact that a part of the money that was obtained from alleged fraudulent transactions have found its way to the Bank account of the petitioner cannot, without anything to suggest the complicity of the petitioner in such transactions, be the basis for the attachment of the Bank accounts of the petitioner. Thus, there being no material to implicate the petitioner in the alleged fraudulent transaction, I find that Ext.P1 communication issued by the 1st respondent cannot be legally sustained. The writ petition is therefore allowed by quashing Ext.P1 communication and directing the 4th respondent Bank to treat the attachment over the Bank account of the petitioner with it as lifted.

Sd/-

A.K.JAYASANKARAN NAMBIAR

JUDGE

SJ

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 COPY OF COMMUNICATION DATED 18/10/2019 ISSUED BY FIRST RESPONDENT TO BANK FOR FREEZING BANK ACCOUNT (IMPUGNED) .
- EXHIBIT P2 COPY OF REPLY DATED 28/11/2019 FILED BEFORE CHIEF COMMISSIONER OF CUSTOMS, COMMISSIONER OF CUSTOMS, ADDITIONAL COMMISSIONER AND ASSISTANT COMMISSIONER OF CUSTOMS WITH ACKNOWLEDGMENT .
- EXHIBIT P3 COPY OF DOCUMENTS SUBMITTED ALONG WITH REPLY DATED 28/11/2019 .
- EXHIBIT P4 COPY O F JUDGMENT OF BOMBAY HIGH COURT IN KAISH IMPEX PRIVATE LIMITED VS. UNION OF INDIA DATED 17/01/2020 .
- EXHIBIT P5 COPY OF JUDGMENT OF DELHI HIGH COURT IN S.B.INTERNATIONAL VS THE ASSISTANT DIRECTOR DATED 05/02/2018 .
- EXHIBIT P6 COPY OF CIRCULAR NO.3/3/2017-GST, DATED 5/7/2017 .
- EXHIBIT P7 COPIES OF GST RETURNS FILED BY PETITIONER DURING THE RELEVANT PERIOD .