



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WRIT PETITION Nos.2737, 2738 and 2794 of 2021

W.P.No.2737/2021

Between:

M/s. Shobha Woollens Pvt. Ltd.
Through Authorized Representative Mr. Umakant Rai,
Registered address at Village Musi, Post Musi,
Bhadohi, Utta Pradesh-221401
Branch Office at Hariyaon, Gyanpur Road,
Bhadohi, Uttar Pradesh-221401.

... **Petitioner**

AND

- \$ 1. Union of India, Through Principal Secretary (Revenue), Department of Revenue, Ministry of Finance, Government of India, New Delhi.
2. Enforcement Directorate, Through Director, 6th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110003.
3. The Assistant Director, Enforcement Directorate, Visakhapatnam Sub-Zonal Office, D.No.39/33-93/2, Plot No.MLG-230 Madhavadhara, Yuda Layout, Visakhapatnam-530018.
4. State Bank of India, Through Chief Manager, Commercial Branch, Hall No.87-88, 2nd Floor, Niryat Bhawan, Bhadohi, Sant Ravidas Nagar-221401.

... **Respondents**

Date of Judgment pronounced on : 05-03-2021

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes/No
3. Whether the Lordship wishes to see the fair copy
of the Judgment? : Yes/No



***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
* HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

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%Date: 05.03.2021

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M/s. Shobha Woollens Pvt. Ltd.
Through Authorized Representative Mr. Umakant Rai,
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4. State Bank of India, Through Chief Manager, Commercial Branch, Hall No.87-88, 2nd Floor, Niryat Bhawan, Bhadohi, Sant Ravidas Nagar-221401.

... Respondents

W.P.No.2738/2021

Between:

M/s. Kaka Overseas Ltd.
Through Authorized Representative Mr. Umakant Rai,
Registered address at Building #339,
Udhog Vihar Phase-II, Gurgaon-122016.
Branch Office at Hariyaon, Gyanpur Road,
Bhadohi, Uttar Pradesh-221401.

... Petitioner

AND

- \$ 1. Union of India, Through Principal Secretary (Revenue), Department of Revenue, Ministry of Finance, Government of India, New Delhi.



2. Enforcement Directorate, Through Director, 6th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110003.
3. The Assistant Director, Enforcement Directorate, Visakhapatnam Sub-Zonal Office, D.No.39/33-93/2, Plot No.MLG-230 Madhavadhara, Yuda Layout, Visakhapatnam-530018.
4. State Bank of India, Through Chief Manager, Commercial Branch, Hall No.87-88, 2nd Floor, Niryat Bhawan, Bhadohi, Sant Ravidas Nagar-221401.

... Respondents

W.P.No.2738/2021

Between:

M/s. Kaka Carpets,
Through Managing Partner, Shri Yadavendra Kumar Roy,
Rep. by authorized representative Mr. Umakant Rai,
Hariyaon, Gyanpur Road,
Bhadohi, Uttar Pradesh-221401.

... Petitioner

AND

- \$ 1. Union of India, Through Principal Secretary (Revenue), Department of Revenue, Ministry of Finance, Government of India, New Delhi.
2. Enforcement Directorate, Through Director, 6th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110003.
3. The Assistant Director, Enforcement Directorate, Visakhapatnam Sub-Zonal Office, D.No.39/33-93/2, Plot No.MLG-230 Madhavadhara, Yuda Layout, Visakhapatnam-530018.
4. State Bank of India, Through Chief Manager, Commercial Branch, Hall No.87-88, 2nd Floor, Niryat Bhawan, Bhadohi, Sant Ravidas Nagar-221401.

... Respondents

! Counsel for petitioners : Sri M. Venkata Krishna Rao

^Counsel for Respondents : Sri Josyula Bhaskara Rao

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>HEAD NOTE:

? Cases referred:

**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO****WRIT PETITION Nos.2737, 2738 and 2794 of 2021****COMMON ORDER:**

The petitioner in W.P.No.2737 of 2021 is a private limited company, the petitioner in W.P.No.2738 of 2021 is a limited company and the petitioner in W.P.No.2794 of 2021 is a partnership firm. All these petitioners are carrying on business of manufacture, sale and export of carpets and floor coverings.

2. All these petitioners are before this Court challenging the imposition of "debit-freeze", by the 3rd Respondent, of the bank accounts of these petitioners maintained with the 4th respondent bank. As the issues raised in these three writ petitions are similar and the facts are also similar, all the three writ petitions are taken-up together for disposal.

3. A case had been initiated on account of FIR No.187 of 2017 registered on 11.05.2017 by the Visakhapatnam Police against one Vaddi Mahesh and others, who are said to have conspired to create false and forged documents for the purpose of cheating the Government of India by transferring of Rs.569 crores in foreign exchange outside India to Singapore, Hongkong and China. A case under the Prevention of Money laundering Act, 2002 (hereinafter referred to as 'the Act') was also registered. It is the case of the 3rd respondent that about



Rs.47.41 crores was transferred from various entities belonging to the Managing Director of the petitioners, to the bank accounts of firms created by the aforesaid Sri Vaddi Mahesh, which were further transferred to the other bank accounts of shell companies created by Sri Vaddi Mahesh.

4. In October, 2020 summons had been issued to the petitioners by the 3rd respondent herein requiring the attendance of the person in management, along with the documents enclosed with the summons. While the said enquiry was going on, the petitioners in all the cases, received a message from the 4th respondent on 19.11.2020 that the petitioners cannot operate their bank accounts in view of an order from the Revenue Authority. As the freeze would cause dislocation of the operations of the petitioners, a request was made to the 4th respondent to furnish the details of the order. On the very same day, the 4th respondent issued a letter dated 19.11.2020 informing the petitioner that the debit-freeze has been placed on the current accounts of the petitioners in terms of the letter No.ECIR/03/VKSZO/2017/732, dated 06.11.2020, received from the 3rd respondent. All the petitioners submit that the said order/communication regarding imposition of “debit-freeze” of their accounts was never intimated to the petitioners by any official of the Enforcement Directorate. On 20.11.2020, the petitioners again wrote an email/letter to the 3rd respondent requesting for unfreezing of the account, in view of the great difficulty faced by the petitioners in carrying on their operations.



5. On 07.12.2020, a raid was conducted on the premises of all the petitioners by the officials of the Directorate of Revenue Investigation and panchanamas were prepared showing the documents seized during the raid. On 11.12.2020, there was a further search/seizure raid conducted on the office of the petitioners, as well as the residential premises of Sri Yadavendra Kumar Roy, who is the person who has control over the petitioners, and a seizure memo was prepared, which showed that no documents were seized from the premises of the petitioners. However, the only material, which has any proximity to the petitioners, seized on that day, were some financial statements as on 31.03.2011 of M/s. Orient Trade International FZE obtained from the residence of Mr. Yadavendra Kumar Roy.

6. On 22.01.2021, the adjudicating authority under the Act, on an application dated 30.12.2020, made by the 3rd respondent, under sub-section (4) of Section 17 of the Act, issued a Show Cause Notice to Sri Yadavendra Kumar Roy and to the petitioner in W.P.No.2738 of 2021, to show cause why the properties of records seized on 11.12.2020 should not be retained as involved in Money-Laundering and confiscated under the Act. The petitioners contend that they came to know of the case against them only when they received these notices from the adjudicating authority

7. The petitioners are before this Court being aggrieved by the order of the 3rd respondent in issuing order No.ECIR/03/VKSZO/2017/732, dated 06.11.2020 directing the



4th respondent to debit-freeze the current accounts of the petitioners. This order was not filed along with the Writ petition. However, it was filed during the writ proceedings.

8. The 3rd respondent had filed his counter in these writ petitions. In the said counter, the 3rd respondent submits that on account of the complaint given by the Income Tax Department (Investigation) Visakhapatnam, an FIR No.181 of 2017, dated 15.05.2017 was registered by the A.P. Police, and as the offences set out in the said FIR are scheduled offences under the Act, a case was recorded vide ECIR/VKSZO/03/2017, dated 22.05.2017 and investigation was taken-up under the Provisions of the Act and Rules. The various bank accounts held in various banks of nine companies incorporated by Sri Vaddi Mahesh were obtained and on the basis of the statements further investigation was taken up. It is submitted that in the course of the investigation, it was found that three entities belonging to Sri Yadavendra Kumar Roy, viz., the petitioners herein, had transferred funds to a tune of Rs.47.41 crores within a span of five months between February, 2015 and July, 2015 and on account of this information, coupled with the statement given by Sri Vaddi Mahesh, summons were issued to Sri Yadavendra Kumar Roy and a statement dated 24.11.2020 was recorded under the Provisions of the Act where he has stated that the amount of Rs.47.42 crores were remitted from his firms/companies to procure carpets which he had exported out-side India, and that even though he did not know Mr.Vaddi



Mahesh, the money was remitted towards purchase of carpets to two other persons.

10. It is stated at para No.3.17 of the counter affidavit that since Sri Yadavendra Kumar Roy could not discharge the burden of proving his innocence under Section 24 of the Act and as no property could be identified as proceeds of the crime, the bank accounts of the petitioners from which the aforesaid Rs.47.42 crores were transferred to the firms of Sri Vaddi Mahesh were frozen as an interim measure by sending letter dated 06.11.2020 to the 4th respondent.

11. It is the contention of the 3rd respondent that the issuance of the letter dated 06.11.2020 to the 4th respondent requesting for a debit-freeze falls under the definition of Investigation as defined under Section 2(na) of the Act which reads as follows:

“Investigation” includes all the proceedings under this Act conducted by the Director or by any authority authorized by the Central Government under this Act for the collection of evidence.”

12. The 3rd respondent contends that the above definition, which is an inclusive one, empowers the investigating agency to take recourse not only to the proceedings under the Act, but also to all other incidental and consequential acts that will be necessary for prevention of money laundering, identifying proceeds of crime and for collection of evidence. The 3rd respondent would contend that in view of the said powers



available to the 3rd respondent, the order of debit-freeze is within the authority and jurisdiction of the 3rd respondent. The 3rd respondent submits that the order of debit-freeze was given to prevent further money laundering and to aid further attachment/seizure and relied upon a Judgment of the Hon'ble High Court of Calcutta dated 30.03.2015 in the case of **Rose Valley Real Estate and Constructions Limited & another vs. Union of India & others** in F.M.A. No. 4031 of 2014.

13. Sri T. Niranjan Reddy, learned Senior Counsel appearing for the petitioners would rely upon the Judgment of the Hon'ble Supreme Court in the case of **OPTO Circuit India Limited vs. Axis Bank and others**, dated 03.02.2021 passed in Criminal Appeal No.102 of 2021 to contend that the direction to debit freeze the accounts of the petitioners is without any authority of law, as no finding either under Section 5 of the Act or under Section 17 of the Act has been given. He would submit that the Judgment of the Hon'ble High Court of Calcutta would not hold the field any more, in view of the Judgment of the Hon'ble Supreme Court. He would pray that the order dated 06.11.2020 be set aside.

CONSIDERATION OF THE COURT:

14. The Prevention of Money Laundering Act, 2002 was brought in, to provide for confiscation of property derived from or invoked in Money Laundering activities. Money Laundering is defined, under Section 3 of the Act, as follows:



“Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.”

15. Section 5 of the Act reads as follows:

“Attachment of property involved in money-Laundering.- (1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that- (a) any person is in possession of any proceeds of crime; and (b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed: Provided that no such order of attachment 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 that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country: Provided further that, notwithstanding anything contained in clause (b), any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is



not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act. (2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the 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 order and material for such period as may be prescribed. (3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of section 8, whichever is earlier. (4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment Explanation.- For the purposes of this sub-section “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property. (5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.”

16. Section 17 of “the Act” reads as follows:

“Search and seizure.- (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- (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 authorise 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; (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 subsection (1) may seize such property. (2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure or upon issuance of a freezing



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 reasons and material for such period, as may be prescribed. c' (3) Where an authority, upon information obtained during survey under section 16, is satisfied that any 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 authorisation 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.”

17. The scheme of the Act provides for an initial attachment of the proceeds of the crime in the possession of any person for an initial period of 180 days by the Director or any other Officer not below the rank of Deputy Director, Authorised by the Director, for the purposes of Section 5 of the Act. This attachment can be made only when the said officer records, in writing, his reason to believe that such a person is in possession of any proceeds of crime and that such proceeds of crime are likely to be concealed or transferred or debited in any manner which may result in frustration of any proceedings relating to confiscation of such proceedings of the crime. After such provisional attachment is made, the said order of attachment,



along with the material in possession of the said officer, shall be forwarded to the adjudicating authority in a sealed envelope for further proceedings. Upon receipt of such provisional attachment order, the adjudicating authority, after due notice to such a person, shall, under Section 8, adjudicate on the question of whether the property under attachment is involved in Money Laundering and direct the confiscation of such property or direct the release of the said attachment.

18. Similarly, where the authority has, recorded in writing, his reason to believe, that any person is in possession of the proceeds of crime involved in Money Laundering, may authorize any officer subordinate to him to search and seize such property. Upon such seizure, the adjudicating authority is again informed and the adjudicating authority would have to further confirm the said seizure of the property.

19. It is clear from the above that, the *sine qua non* for exercise of the powers under either section 5 or section 17 of the Act is the formation of an opinion, by a competent officer, that the conditions set out in these sections are found to exist. In the absence of such a finding, the exercise of power under these Sections would be without basis and cannot survive in the absence of these requirements. There are no such reasons recorded in the order dated 6.11.2020.

20. The Hon'ble Supreme Court in ***OPTO Circuit India Limited vs. Axis Bank and others***, dated 03.02.2021 passed in Criminal Appeal No.102 of 2021, had considered a similar



situation. In this case, the concerned authority, without any findings either under Section 5 of the Act or under Section 17 of the Act, had directed a debit-freeze/stop operation of the accounts of the petitioner therein. The Hon'ble Supreme Court after considering the provisions of the Act had held that while the provisions of the Act empower the appropriate authority to attach or seize the proceeds of the crime, the due process set out in the Act would have to be followed and the minimum requirement for such due process is the formation of an opinion, that he has "reason to believe", set down in writing. The Hon'ble Supreme court had also held that this formation of opinion, at the very least should be available in the file of the authority. In the present case also no finding, recorded in writing, either under Section 5 or Section 17 of the Act, has been placed before this Court, nor has any material been placed to show that such a finding is available in the files of the Enforcement Directorate

21. Sri T. Niranjan Reddy submits that, even if the order of Debit freeze was issued, under either of these provisions, the proceedings would have to be forwarded to the adjudicating authority, which has not been done. He would point to the fact that the 3rd Respondent had filed an application under Section 17 (4) in relation to the documents seized on 11.12.2020, while no such application has been filed in relation to the Debit freeze order dated 6.11.2020. He submits that it would have to be treated that the impugned order dated 6.11.2020 does not



meet the requirements of complying with the due process set out by the Hon'ble supreme Court.

22. Sri Josyula Bhaskar Rao, the learned standing counsel, appearing for the Enforcement Directorate, submits that the Judgement of the Hon'ble Supreme Court was passed with a view to ensure that the statutory dues, payable by the petitioner before the Hon'ble Supreme Court, were cleared and the ratio of the said judgement cannot be applied in the present case. He submits that the impugned proceedings were passed under the ancillary powers of the 3rd respondent and this is clearly explained in the Judgement of the Hon'ble High Court at Calcutta, dated 30.03.2015 in the case of Rose Valley Real Estate and Constructions Limited and Another vs. Union of India and Others in F.M.A. No. 4031 of 2014.

23. The contention of Sri Josyula Bhaskar Rao, that the ratio of the Hon'ble Supreme Court would not apply to the present case, has to be rejected. A perusal of the judgement would show that the judgement is on the interpretation and meaning of the provisions of the Act, and is not restricted in the manner set out by Sri Josyula Bhaskar Rao. The Hon'ble High Court at Calcutta had held, in a similar situation, that such orders of freezing the bank accounts of the persons under investigation, is permissible and should be treated as ancillary to the investigation under progress. However, in view of the judgement of the Hon'ble Supreme Court, it would not be



appropriate to follow the Judgement of the Hon'ble High Court at Calcutta.

24. In view of the above observations of the Hon'ble Supreme Court, the action of the 3rd respondent in the present case in issuing similar orders of debit-freeze/ stop operations, cannot be sustained.

25. In the circumstances, the said order dated 06.11.2020 of the 3rd respondent directing the 4th respondent to freeze the accounts of the petitioners is not valid and has to be set aside.

26. Accordingly, the Writ Petitions are allowed, setting aside the order of the 3rd respondent bearing F.No.ECIR/03/VKSZO/2017, dated 06.11.2020, with a consequential direction to the 4th respondent to permit the petitioners to operate their account No.30108921948-IFSC No.SBIN0004214, A/c No.30078159489-IFSC No.SBIN0004214 and A/c No.30078143718 & 10666398179-IFSC No.SBIN0004214.

27. However, this order shall not preclude the 3rd respondent or the authorities under the Act to initiate action afresh, in accordance with law, as deemed fit.

Accordingly, the writ petitions are allowed. There shall be no order as to costs.

R. RAGHUNANDAN RAO, J.

05.03.2021
sdp



HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

WRIT PETITION Nos.2737, 2738 and 2794 of 2021

05.03.2021

Sdp.