

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 26222 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BIREN VAISHNAV****sd/-****and****HONOURABLE MRS. JUSTICE MAUNA M. BHATT****sd/-**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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BHARATKUMAR PRAVINKUMAR AND CO.**Versus****STATE OF GUJARAT****Appearance:****MR UCHIT N SHETH(7336) for the Petitioner(s) No. 1,2****MR PRANAV TRIVEDI, LD.ASSTT. GOVERNMENT PLEADER for the Respondent(s) No. 1,2****CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV****and****HONOURABLE MRS. JUSTICE MAUNA M. BHATT****Date : 26/10/2023****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)**

1. Rule returnable forthwith. Learned AGP Mr.Pranav Trivedi waives service of Rule on behalf of the respondent-State.

2. With the consent of the learned advocates appearing for the respective parties, this petition is taken up for final hearing today.

3. By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the action of the respondents in not releasing the cash seized from the Petitioner.

4. While issuing Notice, this Court on 22.12.2022 had reproduced the prayers and the contentions of learned counsel for the petitioner, which reads as under:

“1. The petitioners before this Court are seeking return of the cash of Rs.69,98,400/- seized from the petitioners, along with appropriate interest. According to them, there is no notice issued by the respondent authority in this regard and any seizure of the cash is contrary to law. Moreover, the

retention beyond six months and thereafter, with the permission for the six months, is the outer limit provided under the GST Act. Therefore, the present petition with following prayers :

“22(A) This Hon’ble Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or order directing the respondents to forthwith return the cash of Rs.69,98,400 seized from the petitioners along with appropriate interest/ compensation for illegal retention;

(B) Pending notice, admission and final hearing of the petition, this Hon’ble Court may be pleased to direct the respondents to forthwith return the cash of Rs.69,98,400 seized from the petitioners along with appropriate interest/ compensation for illegal retention;

(C) Ex-parte ad interim relief in terms of prayer B may kindly be granted;

(D) Such further relief(s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness your petitioners shall forever pray.”

2. **Notice** returnable on 17/01/2023. Learned AGP Mr.Trupesh Kathiriya waives service of Notice on behalf of respondent No.1. Other respondents to be served through e-mail. Respondents shall file affidavit-in-reply, if any, on or before the next date

of hearing. Let the pleadings be completed by 17/01/2023. The matter shall be taken up on that day for final hearing.”

5. Facts, in brief, are as under:

The first petitioner is a partnership firm and petitioner No.2 is a partner in the partnership firm. The petitioners are engaged in the business of courier services and are registered under the GST Acts. It is the case of the petitioners that silver bars have been seized from the petitioners in the year 2004 by the Income Tax Department. While the petitioners had paid the due taxes, even then the silver bars were not being released and therefore, the petitioners had filed Special Civil Application No.13920 of 2017 before this Court. This Court vide an order dated 07.02.2018 released the silver bars in question.

The silver bars were sold by the petitioners on 19.10.2019 and it was the case of the petitioners that the amount of sale proceeds was received by the petitioners through cheques. Copies of sale invoices and cheques are annexed with the petition to substantiate the statement. The amount was lying in the bank and therefore, cash withdrawal was made by the petitioners in the last week of October,2020 and the first week of November,2021.

It is the case of the petitioners that while the cash was being transferred by the petitioners to the branch office in Rajkot on 13.11.2020, respondent No.2 seized the cash by order dated 13.11.2020. The petitioner made a representation on 15.09.2021 for release of the cash, which has not been decided. Hence, this petition.

6. Mr.Uchit Seth, learned counsel for the petitioners would take us through the seizure memo to indicate that the memo seizing cash amount of Rs.69,98,400/- was issued under section 67(2) of the GST Act. Relying on provisions of Section 67 of the Act, he would submit that power of inspection, search and seizure as provided under the Act, provides that where the proper officer, not below the rank of the Joint Commissioner either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things. He would submit that cash, which is seized by the respondent would not form the subject matter of seizure as they are neither goods, documents or things, in as much as under the frame work of the Act. When there is no reason to

believe that seizure of cash is useful for or relevant to any proceedings under this Act, it cannot be seized. In this case, cash cannot be seized under the provisions of Section 67, particularly when it is not shown as stock in trade of the assessee. It is also evident, in learned advocate Ms.Sheth's submission that if the definition of the word "goods" under this Act is read, which means every kind of movable property other than money. Fairly stating that there is decision of Madhya Pradesh High Court in the case of **Smt.Kanishka Matta Vs. Union of India and others** reported in [2020]120 taxmann.com 174, where the Court in Para-18 opined that the term "thing" would include "money", he would subsequently pressing into the service of the decision of Division Bench of Kerala High Court in the case of **Shabu George Vs. State Tax Officer (IB)** in [2023]153 taxmann.com 46 (Kerala), which, after considering the decision of Madhya Pradesh High Court, held in favour of the assessee holding that the power of any authority to seize any 'thing' while functioning under the provisions of a taxing statute must be guided and informed in its exercise by the object of the statute concerned.

7. On the facts, when it was found that the cash, which was seized from the premises was not stock in trade, it would not have been seized under the provisions of GST Act. In his submission, the decision of Kerala High Court, received the

stamp and approval by the Supreme Court in as much as the SLP was dismissed. Reliance was also placed on the decision of Division Bench of Delhi High Court in the case of **Arvind Goyal CA Vs Union of India and others** in W.P.(C) 12499/2021, where keeping in view the larger perspective of provision of Section 67(2) of the Act, the Division Bench of Delhi High Court indicated that the seizure is limited to goods liable for confiscation or any documents, books or things, which may be “useful for or relevant to any proceedings under this Act”. Division Bench also held that the cash does not fall within the definition of term “goods” and it is also difficult to accept that cash could be termed as a “thing” useful for or relevant for proceedings under the GST Act.

8. Mr.Pranav Trivedi, learned AGP would refer to the affidavit-in-reply and would submit that during the course of search, two big parcels were found and opening of such parcels, cash amounting to Rs.69,98,400/- was found, wherein no name of sender of the cash or receiver of the cash was mentioned. Since the proper officer was of the opinion that such “cash” being “thing” under section 67(2) of the Act and relevant for the proceedings under this Act, seizure order was issued on 13.11.2020. Reading the affidavit, he would submit that total amount was explained by the petitioner as being consideration for sale of silver bars.

Learned AGP Mr.Pranav Trivedi relied upon decision of Madhya Pradesh High Court in the case of **Smt.Kanishka Matta Vs. Union of India and others** reported in **[2020]120 taxmann.com 174** and submitted that this petition may be dismissed.

9. Having considered the submissions of learned advocates appearing for the respective parties, it will be in fitness of things to reproduce the provisions of section 67 of the CGST Act particularly section 67(2)(3)(7) of the Act, which reads as under:

67 Power of inspection, search and seizure”

(1)

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorized by him, may serve on the owner or the custodian 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:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4)

(5)

(6)

(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within

six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.”

10. The term “goods” too is also defined under the Act, which reads as under:

"Goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;”

11. Reading the CGST Act and particularly the preamble thereto, would indicate that it is an act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto.

When this is read in context of provisions of sub-section (2) of section 67, obviously, when the proper officer

confiscates any goods, documents, books or things, he must have reason to believe that they shall be useful for or relevant to any proceedings under this Act.

12. Reading of affidavit primarily explains that even as per the case of respondent it was not the opinion of the proper officer that it was a seizure in relation to unexplained transaction under the Goods and Services Act, but it was an amount of consideration received on sale proceeds of silver bars. This therefore has to be read in light of observations of Division Bench of Kerala High Court in the decision of **Shabu George (supra)**. Para-3 of the aforesaid decision of Kerala High Court, reads as under:

“3. During the pendency of this writ appeal, the Intelligence Officer passed an order dated 21.3.2023, disposing the representation preferred by the appellants as per the directions of the learned single Judge. On a reading of the order that rejects the said representation we find that the stand taken by the Intelligence Officer is essentially that in view of the specific provisions of Section 67(2) of the CGST Act, which authorises the seizure of ‘things’, which inter alia includes cash also as held by the High Court of Madhya Pradesh in the judgment dated

26.8.2020 in WP(C)No.8204 of 2020, the authority was justified in seizing the cash and retaining the same pending a culmination of the investigation. We must admit to being a bit puzzled by the stand taken by the said Intelligence Officer in the order dated 21.03.2023 that is now produced before us by the learned Government Pleader. While it may be a fact that Section 67(2) of the CGST Act authorizes the seizure of things, including cash in appropriate cases, we do not think that the present is a case that called for a seizure of the cash found in the premises of the appellants at the time of the search. The power of any authority to seize any 'thing' while functioning under the provisions of a taxing statute must be guided and informed in its exercise by the object of the statute concerned. In an investigation aimed at detecting tax evasion under the GST Act, we fail to see how cash can be seized especially when it is the admitted case that the cash did not form part of the stock in trade of the appellant's business. It is evident from the order of the Intelligence Officer that the cash that was seized from the premises of the appellants was not the stock in trade of the quarry business that was conducted by the appellant. The findings of the

Intelligence Officer that ‘it is suspicious that this much amount of money kept in the house of M/s.Shabu as idle and not deposited at bank’ and further ‘the amount received as gift on the day of marriage has not been recorded in his income tax return and from this it is evident that the money is from illicit sources’ reveal the extent to which authorities under the Act are misinformed of their powers and the limits of their jurisdiction. The aforesaid findings of the Intelligence Officer could perhaps have been justified had he been an officer attached to the Income Tax department. In the context of the GST Act, the findings are wholly irrelevant. We find that the seizure of cash from the premises of the appellants was wholly uncalled for and unwarranted. Moreover, as the respondent has retained the seized cash for more than six months and is yet to issue a show cause notice to the appellants in connection with the investigation, there can be no justification for a continued retention of the said amount with the respondent. We therefore, allow this appeal by directing the first respondent to forthwith release to the appellant the cash seized from the premises, against a receipt to be obtained from him. The amount shall be

released to the appellant without any delay, and at any rate, within a week from the date of receipt of a copy of this judgment.

The writ appeal is allowed as above.”

Reading of the aforesaid para indicates that once it is found that the cash did not form a part of stock in trade, it could not have been seized.

13. As observed by the Kerala High Court, it was not the case of seizing officer that it was an investigation, which concerned the Income Tax Department. It was not in the context of GST Act that the proper officer could have reason to believe that seized cash, otherwise cannot be termed to be useful for the purposes of and relevant to any proceedings under the CGST Act. That interpretation is also evident from reading Para-13 of Division Bench of Delhi High Court in the case of **Arvind Goyal CA (Supra)**. Para-13 thereof reads as under:

“13. In view of the above, one of the principal question that requires to be addressed is whether cash can be seized by the officers under Section 67(2) of the GST Act. Prima facie, a plain reading of Section 67(2) of the GST Act indicates that the

seizure is limited to goods liable for confiscation or any documents, books or things, which may be "useful for or relevant to any proceedings under this Act". Clearly, cash does not fall within the definition of goods. And, prima facie, it is difficult to accept that cash could be termed as a "thing" useful or relevant for proceedings under the GST Act. The second proviso to Section 67(2) of the GST Act also provides that the books or things so seized would be retained by the officer only so long as may be necessary "for their examination and for any inquiry or proceedings under the Act."

14. Admittedly, there is no requisition under section 132(A) of the Income Tax Act, though, it was the case of the State that intimation was sent to the Income Tax Department. Even otherwise, the petitioner has not shown the cash as stock in trade.

15. Even otherwise on the facts of this case, what is evident is that the Seizure memo was dated 13.11.2020 and in accordance with sub-section (7) of section 67 thereof when no Notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession, they were seized. On this ground

thereto, the petitioner is entitled to the prayer that the amount of cash seized i.e. Rs.69,98,400/- to be returned forthwith to the petitioner. Accordingly, the present petition is allowed. The respondents are directed to return an amount of Rs.69,98,400/- to the petitioner. It is open for the respondents to return the amount and transmit the same through digital mode in the bank accounts of the petitioner. Details of which shall be provided to the petitioner within a period of one week from the date of receipt of copy of this order.

Direct service is permitted.

sd/-

(BIREN VAISHNAV, J)

sd/-

(MAUNA M. BHATT, J)

DIPTI PATEL.