$~6

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 13517/2024

RAHUL TAYAL & ORS. .....Petitioners

Through: Mr. Sunil Dalal, Sr. Adv. with Mr. Vedant Gupta, Mr. Devyansh, Mr. Nikhil Beniwal, Mr. Knavish Bhati, Ms. Shipra Bali, Mr. Akash Gupta and Mr. Mahabir Singh, Advs.

versus

ADDITIONAL DIRECTOR DIRECTORATE GENERAL OF GST INTELLIGENCE DGGI JAIPUR ZONAL UNIT & ORS. .....Respondents

Through: Mr. Anurag Ojha, SSC

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **18.10.2024**

1. The present writ petition has been preferred seeking framing of a direction commanding the respondents to forthwith release the sum of INR 2,41,86,000/- seized from the premises of the petitioner no. 2 along with applicable interest.

2. Mr. Dalal, learned senior counsel draws our attention to the provisions contained in Section 67(2) of the **Central Goods and Services Act, 2017**[1] and more particularly to the observations as rendered by Division Bench of the Court in **Deepak Khandelwal Proprietor M/s Shri Shyam Metal v. Commissioner of CGST,**

[1] Act

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 04/11/2024 at 11:23:38

Delhi West and Anr[2]**.** While dealing with the aspect of whether currency could constitute goods and whether the power conferred by Section 67 of the Act would extend to a seizure of currency, the Court in *Deepak Khandelwal* held as follows:

> "**40.** It is clear from the schematic reading of Section 67 as well as other provisions of the Act that the purpose of Section 67 of the Act is not recovery of tax; it is not a machinery provision for enforcing a liability. The purpose of Section 67 of the Act is to empower authorities to unearth tax evasion and ensure that taxable supplies are brought to tax. In respect of goods and supplies, which are subject-matter of evasion, the proper officer has the power to seize the goods to ensure that taxes are paid. Once the department is secured in this regard either by discharge of such liability or by such security or bond as the authority concerned deems fit the goods are required to be released in terms of sub-section (6) of Section 67 of the Act.
>
> **41.** The second limb of Section 67(2) of the Act permits seizure of documents or books or things so as to aid in the proceedings that may be instituted under the Act. The documents or books or things cannot be confiscated and have to be returned. This is amply clear from the plain language of the second proviso to sub-section (2) of Section 67 of the Act. In terms of the second proviso to sub-section (2) of Section 67, the documents or books or things seized are required to be retained only for so long as it may be necessary "for their examination and for any inquiry or proceedings under the Act". Once the said purpose is served, the books or documents or things seized under sub-section (2) cannot be restrained and are required to be released.
>
> **42.** The second proviso, although couched as a proviso, is an integral part of sub-section (2) of Section 67 of the Act. The same clearly reflects that the legislative intent of empowering seizure of documents or books or things is for enabling their use in aid of the proceedings under the Act. Thus, seizure of such documents or books or things is conditional upon the proper officer's opinion. That the same are "useful for or relevant to" such proceedings.
>
> **43.** Sub-section (3) of Section 67 of the Act, consistent with the legislative intent of permitting seizure of books or documents or things, provides that if the documents or books or things seized under sub-section (2) are not relied upon for issue of a notice under the Act or rules made thereunder, the same shall be returned within a

---

[2] 2023 SCC OnLine Del 4985

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 04/11/2024 at 11:23:38

period of thirty days. Although, there is no ambiguity in the language of sub-section (2) of Section 67 of the Act that seizure of books or documents or things is permissible only if the same are considered useful for or relevant to the proceedings under the Act; sub-section (3) of Section 67 makes it amply clear that the purpose of seizure of books or documents or things is only for the purpose of reliance in the proceedings under the Act. It, thus, posits that if the documents or books or things are not relied upon in any notice that is issued, the same are liable to be returned.

44. It follows from the contextual interpretation of sub-sections (2) and (3) of Section 67 that seizure of books or documents or things are only for the purpose of relying on such material in proceedings under the Act.

45. It is also relevant to refer to sub-section (11) of Section 67 of the Act. The said sub-section empowers the proper officer to seize, for reasons to be recorded in writing, the accounts, registers or documents, which are produced before him and to retain the same so long as it is necessary "in connection with any proceedings under this Act or the rules made thereunder for prosecution".

46. It is clear from the scheme of Section 67 of the Act that the word "things" is required to be read, ejusdem generis, with the preceding words "documents" and "books". It is apparent that the legislative intent of using a wide term such as "things" is to include all material that may be informative or contain information, which may be useful for or relevant to any proceedings under the Act. Although, documents and books are used to store information; they are not the only mode for storing information. There are several other devices that are used to store information or records such as pen drives, personal computers, hard disks, mobiles, communication devices, etc. The word "things" would cover all such devices and material that may be useful or relevant for proceedings under the Act. The word "things" must take colour from the preceding words, "documents" and "books". It denotes items that contain information or records, which the proper officer has reason to believe is useful for or relevant to the proceedings under the Act. The context in which the word "things" is used makes it amply clear that, notwithstanding, the wide definition of the term "things", the same is required to be read ejusdem generis with the preceding words. It is apparent that the legislative intent in using a word of wide import is to include all possible articles that would provide relevant information, records, and material which may be useful for or relevant to proceedings under the Act.

47. We are unable to accept that the word "things" must be read expansively to include any and everything notwithstanding that the

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 04/11/2024 at 11:23:38

same may not yield and/or provide any material useful or relevant to any proceedings under the Act as contended on behalf of the Revenue. It is necessary to bear in mind that power of search and seizure is a drastic power; it is invasive of the rights of a taxpayer and his private space. Conferring of unguided or unbridled power of this nature would fall foul of the constitutional guarantees. It necessarily follows that such power must be read as circumscribed by the guidelines that qualify the exercise of such power, and the intended purpose for which it has been granted. As stated above, it is contextually clear that exercise of such power is restricted only in cases where in the opinion of the proper officer, seizure is useful for or relevant to any proceedings under the Act. The second proviso of sub-sections (2) and (3) of Section 67 of the Act makes it amply clear that the purpose of seizure is for the purpose of relying on the same in proceedings under the Act.

48. It is relevant to refer the decision of the Bombay High Court in *Emperor* v. *Hasan Mamad* [*Emperor* v. *Hasan Mamad*, 1940 SCC OnLine Bom 31 : AIR 1940 Bom 378] . In the said case, the accused was convicted under Section 152 of the Bombay Municipal Boroughs Act, 1925. The allegation against the accused was that he had allowed the hand-driven lorries containing fruits to remain on a public street at Ahmedabad for more than half an hour. Section 152 of the Bombay Municipal Boroughs Act, 1925 reads as under:

> "(1) Whoever in any area after it has become a municipal district, or borough—
> (*a*) shall have built or set up, or shall build or set up, any wall or any fence, rail, post, stall, verandah, platform, plinth, step or any projecting structure or thing or other encroachment or obstruction; or
> (*b*) shall deposit or cause to be placed or deposited any box, bale, package or merchandise or any other thing,
> in any public place or street … shall be punished.…"

49. The Division Bench of the Bombay High Court in *Hasan Mamad case* [*Emperor* v. *Hasan Mamad*, 1940 SCC OnLine Bom 31 : AIR 1940 Bom 378] rejected the contention that the hand-driven lorry containing fruits could be considered as "thing" either under clause (*a*) or clause (*b*) of sub-section (1) of Section 152 of the Bombay Municipal Boroughs Act, 1925. It is held that the word "thing" in both the clauses is required to be construed ejusdem generis. The hand-driven lorry thus could not be considered as a stall or any projecting structure or a box, bale, package or merchandise. The court further held as under:

> "The question is whether the hand cart, which the accused had kept in the street, fell within the prohibition contained in Section 152 sub-section (1), of the Bombay Municipal Boroughs Act. It was conceded in the lower court that the

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 04/11/2024 at 11:23:38

case did not fall within sub-section (1)(*a*) of that section. But Mr G.N. Thakor, who seldom concedes anything, did not concede that proposition. He says that the act of the accused amounted to setting up a stall. No doubt you may have a stall on wheels, but I am clearly of opinion that introducing into a street a lorry on wheels with goods for sale upon it does not amount to setting up a stall within Section 152(1)(*a*). In my opinion that sub-section deals with making some form of addition or annexe, more or less permanent, to a building in the street. It is directed against the man who has a shop or house in the street, and who encroaches upon the street by making some sort of addition to his house or shop.

I think the real question is whether the case can be brought within Section 152(1)(*b*). In my opinion the words 'or any other thing' must be read ejusdem generis as the words 'box, bale, package or merchandise'. Those words seem to cover merchandise, and things in which merchandise can be packed, and any other thing must be of the same kind or genus and does not include a vehicle. In my view a motor car or a motor lorry or a horse drawn or hand-propelled vehicle, though containing merchandise and left standing in a street, cannot be said to come within the section. The hand lorry of the accused clearly falls within the definition of vehicle contained in Section 3(21) of the Bombay Municipal Boroughs Act. The control of vehicles in streets is dealt with by the Bombay District Police Act. Whatever the powers of the police may be under that Act, I am of opinion that the learned Sessions Judge was right in the view he took that a vehicle does not fall within the mischief of Section 152."

50. The contextual interpretation of all sub-sections of Section 67 of the Act clearly indicates that the same do not contemplate seizure of valuable assets, for securing the interest of Revenue.

51. In *RBI* v. *Peerless General Finance & Investment Co. Ltd.* [*RBI* v. *Peerless General Finance & Investment Co. Ltd.*, (1987) 1 SCC 424 : (1987) 61 Comp Cas 663] , the Supreme Court held as under: (SCC p. 450, para 33)

"*33*. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when the object and purpose of its enactment is known. With this knowledge, the statute must be read first

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 04/11/2024 at 11:23:38

as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses the court must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

xxxx xxxx xxxx

54. Section 67 of the Act is not a machinery provision for recovery of tax; it is for ensuring compliance and to aid proceedings against evasion of tax. Section 79 of the Act provides for the machinery for recovery of tax. Section 83 of the Act provides for provisional attachment of any property belonging to a taxable person to safeguard the interests of the Revenue. Section 67 of the Act must be read schematically along with other provisions of the Act.

55. The Revenue has averred in its counter-affidavit that cash and silver bars in question were seized because "the petitioner could not produce any lawful evidence of its purchase/possession and they appeared to be sale proceeds from the goodless/fake invoices being transacted by the petitioner". The search and seizure operations under Section 67 of the Act are not for the purpose of seizing unaccounted income or assets or ensuring that the same are taxed. The said field is covered by the Income Tax Act, 1961. Thus, even if it is assumed that the petitioner could not produce any evidence of purchase of the silver bars or account for the cash found in his possession, the same were not liable to be seized under sub-section (2) of Section 67 of the Act. The power of the proper officer to seize books or documents or things does not extend to seizing valuable assets for the reasons that they are unaccounted for or may be liable to confiscation under any other statute. Concededly, there is no material to indicate that the particular silver bars or cash were received by the petitioner in specie against any particular fake invoice.

56. There may be cases where the Revenue finds that a particular currency note or any particular asset has evidentiary value to establish the Revenue's case. Illustratively, a delinquent dealer supplies goods without invoices only on presentation of a currency

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 04/11/2024 at 11:23:38

note that bears a particular number. The presentation of the currency note is used as a means of authenticating the identity of the purchaser. The number of the particular currency note is recorded in diary maintained by the purchaser. The Revenue Officer ascertains this modus operandi of evasion of taxes. The currency note, correlated with the diary, would be relevant in establishing evasion of tax in respect of certain goods. Undoubtedly, in such cases, the currency note is material that yields information as to the modus adopted for evading tax; the proper officer may seize the currency note for its evidentiary value and relevance in establishing evasion of tax in proceedings under the Act. The same may be relied upon in the proceedings that may ensue. The particular currency note in such a case would yield certain information when read in conjunction with the diary. It is material to note that such currency note can be retained for so long as may be necessary for its "examination and for any enquiry or proceedings under the Act". Cash or other assets, which are not required in species in aid of any proceedings, but represent unaccounted wealth, cannot be seized under Section 67 of the Act. This Court had pointedly asked Mr Harpreet Singh whether there was any material showing information that the currency or the silver bars that were seized could be traced in species to any transaction which the Revenue required to establish in any proceedings. However, the answer to the same was in the negative. It is, thus, clear that the silver bars and the cash were seized only on the ground that it was "unaccounted wealth" and not as any material which was to be relied upon in any proceedings under the Act.

57. Mr Harpreet Singh has placed reliance on the decision of the Madhya Pradesh High Court in *Kanishka Matta* v. *Union of India* [*Kanishka Matta* v. *Union of India*, (2021) 89 GSTR 56 : 2020 SCC OnLine MP 4564] . In that case, the Division Bench at Indore had rejected the prayer for release of Rs 66,43,130 that were seized from the premises of the petitioner. The court held that the word "things" as appearing in sub-section (2) of Section 67 of the Act is required to be given wide meaning as per *Black's Law Dictionary*. The court also referred to Wharton's Law and had noted that the word "thing" is defined to include "money". In addition, the court had also referred to a decision of the Supreme Court referring to the Heydon's rule, and concluded that money was included in the word "things". With much respect to the Court and its opinion, we are unable to persuade ourselves to adopt the said view. As noted above, the power of search and seizure are drastic powers and are not required to be construed liberally. Further, we find that the legislative intent of permitting seizure of books or documents or things in terms of sub-section (2) of Section 67 of the Act is crystal clear and it does not permit seizure of currency or valuable assets, simply, on the ground that the same represent unaccounted wealth. The mischief rule or the Heydon's rule (propounded in the year 1584

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 04/11/2024 at 11:23:38

in *Heydon case* [*Heydon case*, (1584) 3 Co Rep 7 : 76 ER 637]) requires a statute to be interpreted in the light of its purpose. The purpose of the Act is not to proceed against unaccounted wealth. The provision of Section 67 of the Act is also not to seize assets for recovering tax. Thus, applying the principle of purposive interpretation, the power under Section 67 of the Act cannot be read to extend to enable seizure of assets on the ground that the same are not accounted for.

xxxx xxxx xxxx

62. Thus, even if, it is accepted, which we do not, that the proper officer could seize the currency and other valuable assets in exercise of powers under sub-section (2) of Section 67 of the Act, the same were required to be returned by virtue of sub-section (3) of Section 67 of the Act because the silver bars and currency have not been relied upon in the notice issued subsequently.

63. In view of the above, the petition is allowed. The respondents are directed to forthwith release the currency and other valuable assets seized from the petitioner during the search proceedings conducted on 28-1-2020. It is, however, clarified that the respondents are not precluded from instituting or continuing any other proceedings under the Act in accordance with law. Nothing stated in this order shall be construed as an expression of opinion on the petitioner's liability to pay any tax, penalty or interest under the Act."

3. In view of the above, we are of the considered opinion that the seizure of currency would clearly not sustain.

4. We, accordingly, allow the instant writ petition and direct the respondents to handover and release the sum of INR 2,41,86,000/- along with applicable interest to petitioner no.2. The aforesaid be completed with due expedition.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

OCTOBER 18, 2024/RW

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 04/11/2024 at 11:23:38