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

Judgement reserved on **06.07.2021**
Judgement pronounced on **20.07.2021**

\+ **W.P.(C) 4847/2021**

M/S. R.J. TRADING CO. .....Petitioner

Through: Mr. Priyadarshi Manish, Mrs. Anjali J. Manish and Ms. Kinjal Shrivastava, Advocates.

*versus*

COMMISSIONER OF CGST, DELHI NORTH & ORS. .....Respondents

Through: Mr. Harpreet Singh, Sr. Standing Counsel with Mr. Arunesh Sharma, Advocate for R-1, 2, 4 and 5.
Mr. Aditya Singla and Ms. Cheshta Jetly, Advs. for R-3.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**HON'BLE MR. JUSTICE TALWANT SINGH**

**RAJIV SHAKDHER, J :**

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**Preface: -**

1. This is a writ petition instituted by an entity going by the name M/s R.J. Trading Co. [in short "RJT"] wherein, in effect, the reliefs sought are for issuance of the following directions.

i. For setting aside and quashing the order of prohibition whereby goods inventoried in panchnama dated 05.03.2021 have been detained by respondent no. 5.

ii. Issuance of a writ, order or direction, like a mandamus to the respondents to release the goods detained under the aforementioned prohibition order dated 05.03.2021.

iii. To declare the search conducted on the premises of RJT as illegal since it did not align with the provisions of Section 69 [*sic* Section 67] of the Central Goods and Services Tax (CGST) Act, 2017 [in short "CGST Act"].

iv. Lastly, award costs.

2. Before we proceed to adjudicate the writ petition, it would be relevant to advert to certain facts, circumstances, as also assertions, made in the pleadings by the parties.

**Background facts: -**

3. RJT claims that it obtained registration with the GST department and was, accordingly, issued a registration certificate on 20.09.2020.

3.1. RJT also claims that it is inter alia in the business of trading in cigarettes which are supplied to it by authorised dealers of well-known manufacturing companies. It is also averred by RJT that since the time it commenced business, it has traded in tobacco products, which includes, as indicated above, cigarettes, and in that regard, has complied with the provisions of not only the CGST Act

but also the Delhi Goods and Services Tax Act, 2017. It is claimed by RJT th it has deposited tax from time to time as required under the said statutes. The details of the tax deposited and copies of challans have been filed along with the writ petition. There is also an assertion that necessary filings [GSTR – 3B] as required under the law, have been made by RJT for the period spanning between September to December 2020 and January and February 2021. It is claimed that GSTR – 1 was filed from March 2021 as well.

3.2. Given the statutory compliances said to have been made by RJT, it claims it was surprised, when on 13.02.2021 the officers of Directorate General of Goods and Services Tax Intelligence (DGGI), Ahmedabad Zonal Unit, (AZU) visited its premises located in Delhi backed by an authorization issued by Joint Director, DGGI (AZU) dated 12.02.2021 under Section 67(2) of the CGST Act. The team which visited RJT's premises also comprised various officers attached to DGGI Delhi Zonal Unit (DZU) including Inspector, CGST South Commissionerate Delhi, South Delhi.

3.3. Since on the day of the visit, RJT's registered premises was found locked, the same was sealed. These events were recorded by a Senior Intelligence Officer (SIO), DGGI (AZU) in the panchnama dated 13.02.2021.

3.4. On 14.02.2021, the officers of DGGI (AZU) once again, paid a visit to the premises of RJT. A search was conducted at RJT's premises after they were de-sealed. The search revealed that RJT on that date carried a stock of 1,08,000 Gold Flake Super Star cigarettes which were packed in 9 boxes. Accordingly, a panchnama of even date i.e. 14.02.2021 was drawn up by SIO, DGGI (AZU). Inter alia, in this panchnama, it was noted that the stock was "found in order". Furthermore, the panchnama also recorded the fact that the officers of DGGI (AZU) had resumed certain documents, the details of which, were recorded in GST INS – 02 i.e. the order of seizure generated in consonance with the provisions of Rule 139(2) of the CGST Rules, 2017 [in short "Rules"]. The

documents resumed/seized, as reflected in Form GST INS – 02, were follows.

| Sr. No. | Description of books/documents/things seized | No. of books/documents/things seized/Period | Remarks/Page No./Invoice No. |
|---|---|---|---|
| A-1 | Purchase Invoice Box file | - | 1 to 779 |
| A-2 | Purchase Invoice Box file | - | 1 to 843 |
| A-3 | Purchase Invoice Box file | - | 1 to 911 |
| A-4 | Sales Invoice Box file | - | 1 to 873 |
| A-5 | Sales Invoice Box file | - | 1 to 963 |
| A-6 | Miscellaneous file | Stock register details | 1 to 219 |

3.5. As would be evident, the officers of DGGI (AZU), amongst the documents seized on 14.02.2021, resumed a miscellaneous file that contained "stock register details".

3.6. It appears that on the very same date i.e. 14.02.2021, summon's were issued to one of the partners of RJT i.e. Mr. Rajiv Kumar, inter alia, to give evidence, for the production of documents and for making a statement before the concerned SIO.

3.7. RJT claims that on 05.03.2021, at about 05:20 P.M., another set of officers from a different Commissionerate i.e. CGST Commissionerate, Gautam Budh Nagar paid a visit to its registered premises for, conducting a search. The authorisation for carrying out the search was issued by Additional Commissioner, CGST Delhi North Commissionerate.

3.8. It is RJT's case that a day before the second search, that is, on 04.03.2021, it had closed its stock, insofar as cigarettes were concerned, which reflected that it possessed 98 cartons comprising 11,32,000 sticks. RJT's version is that these cigarettes were purchased from two suppliers i.e. M/s Blue Water Agencies; an authorised supplier of ITC Limited and M/s Mahadev Agencies. RJT asserts that supplies made by the aforesaid entities were

supported by necessary documents i.e. e-invoice/tax invoice, e-way bill, a transporters' challans. Pertinently, it is also asserted by RJT that while the search was being carried out on 05.03.2021, it received 92 cartons comprising a variety of cigarettes, consisting of 10,94,000 cigarette sticks. This consignment was supplied by M/s Blue Water Agencies and was captured in two separate e-invoices of the same date i.e. 04.03.2021 bearing numbers C393 and C394. Resultantly, it is averred by RJT that on receipt of the fresh consignment on 05.03.2021, its cumulative stock of cigarettes, on that date, comprised 190 cartons consisting of 22,26,000 cigarette sticks. A photocopy of its stock report has been filed by RJT. [See Annexure P-10 (Colly).]

4. Like in the previous occasion, a panchnama was drawn up on 05.03.2021. The panchnama recorded the fact that the authorisation dated 05.03.2021 was issued by Additional Commissioner, CGST Delhi North Commissionerate. It also recorded [something which is asserted in the petition] that 190 corrugated boxes containing cigarettes were found at RJT's premises along with some documents that were stored in a wooden almirah, which were, resumed to glean information relevant for the enquiry. Besides this, the panchnama also records that RJT's employee, Mr. Jaskirat Singh provided the stock status as of 05.03.2021. Furthermore, it is recorded that Mr. Jaskirat Singh was unable to provide the stock register maintained at RJT's premises. Based on this, a conclusion appears to have been drawn, something which is also recorded in the panchnama, that the concerned officer had formed a "reasonable belief" that the goods i.e. the cigarettes packed in 190 corrugated boxes were meant for "illicit trade/supply". [See page 138 of the paper book.]

4.1. Consequently, the concerned officer detained the 190 corrugated boxes (cartons) and left them in the custody of Mr. Jaskirat Singh under *supurdnama* of even date i.e. 05.03.2021. This apart, a seizure document was drawn up in Form GST INS -02 in respect of documents that had been seized. The seizure of

documents in the exercise of powers under Section 67(2) of the CGST Act w prefaced by the following reasoning. [See page 141 of the paper book.]

> "And on scrutiny of document/papers and goods found during the search, I have reasons to believe that certain goods liable to confiscation and documents useful/relevant to proceedings under this Act are secreted in [the] place mentioned above."

4.2. The premises referred to is the registered office of RJT where the search was conducted.

4.3. Besides this, an order of prohibition of even date i.e. 05.03.2021 in Form GST INS – 03 was also passed. This form was accompanied by an inventory list which gave a break up of 190 cartons of cigarettes qua which the aforementioned order of detention was passed. [See page 146 of the paper book.]

> "and on scrutiny of the books of accounts, registers, documents/papers and goods found during the inspection search, I have reasons to believe that certain goods liable to confiscation and/or documents and/or books and/or things useful for or relevant to proceedings under this Act are secreted in place(s) mentioned above.
>
> Therefore, in [the] exercise of the powers conferred upon me under subsection (2) of Section 67, I hereby order that you shall not/shall not cause to remove, part with, or otherwise deal with the goods except without the previous permission of the undersigned"

4.4. The order of prohibition was issued by one Mr. Naveen Sharma, Inspector, CGST.

4.5. Immediately thereafter, i.e. on 06.03.2021, two separate summons of even date were served on the partners of RJT, i.e., Mr. Rajiv Kumar and Mr. Jatinder Singh Nagpal inter alia to tender a statement. The partners were called upon to make themselves available at the designated time and place for recording their statements on 08.03.2021.

4.6. It appears that on 08/09.03.2021 the statement of Mr. Rajiv Kumar was recorded which he retracted on 11.03.2021. An averment has been made to the

effect that physical force was used and for this purpose, a medical-legal repo dated 09.03.2021 issued by a Government hospital in Amritsar has been filed.

4.7. RJT claims that it was forced to approach this Court as the goods i.e. the cigarettes cartons qua which the impugned prohibition order was issued, was not being lifted, causing RJT, a grave financial injury.

5. The instant writ petition was listed before the Court for the first time on 19.04.2021 when after recording briefly, the submissions advanced by Mr. Priyadarshi Manish, who appears on behalf of RJT, notice was issued in the writ petition, with liberty to approach the concerned officer for release of the goods i.e. the detained cigarette cartons. It would be relevant to note that on the said date i.e. 19.04.2021 the respondents were represented by their respective counsels. Mr. Harpreet Singh was present on behalf of respondent nos. 1, 2, 4 and 5 while Mr. Aditya Singla represented respondent no. 3.

5.1. After giving an opportunity to the respondents to file a counter-affidavit in the matter, it was made returnable on 25.05.2021. In the very same order, it was recorded that RJT will move an application within 5 days of the said order and that the concerned officer will consider the same and if the request was found viable, would release the goods, on the terms deemed fit. A direction was also issued that an authorised representative of RJT would be heard and a speaking order will be passed within 3 days of the application being made, bearing in mind, that the goods were perishable.

5.2. It appears, although, an application was made, the same was not disposed of, which propelled RJT to file an application i.e. CM No. 15935/2021 before this Court seeking compliance of aforesaid directions. Given the fact that Mr. Singh informed us that a date had been fixed for disposal of the application, Mr. Manish chose not to press the application. Consequently, the main matter was re-notified for the date already fixed i.e. 25.05.2021.

5.3. On 25.05.2021, we were informed by Mr. Manish that respondent no. had not filed its counter-affidavit. According to Mr. Manish, the counter-affidavit of respondent no. 3 was crucial for the purposes of adjudicating the instant writ petition. Given this position, further time was granted to respondent no. 3 to file a counter-affidavit. Accordingly, the matter was fixed for hearing on 03.06.2021. On that date, arguments were heard in the matter on behalf of RJT which were advanced by Mr. Manish. The matter was listed for further arguments on 04.06.2021, which was the last date before which the Court went into summer recess.

5.4. Since Mr. Manish indicated on 04.06.2021, that he would require further time, the matter was posted for 05.07.2021; being the first day of Court reopening after the summer break. The arguments in the matter were finally completed and judgement in the matter was reserved on 06.07.2021. We may also note, in the interregnum, the application filed on behalf of RJT for release of detained goods was disposed of via order dated 12.05.2021. The order was placed on record by RJT along with an interlocutory application i.e. CM 16668/2021. In this application, the prayer made is that order dated 12.05.2021 be set aside and detained goods be released against such condition that the Court may deem fit. We may also note, RJT with its rejoinder has filed a panchnama, dated 13.03.2021, concerning a search carried out at the premises of M/s Mahadev Agencies i.e. one of the suppliers of RJT. In this panchnama, inter alia, the following is recorded vis-à-vis transactions conducted between M/s Mahadev Agencies and RJT. [See PDF page 546 of the paper book]

> "… Shri Chandumal H. Parchani informs that through 8 (Eight) Invoices dated from 27.02.2021 to 04.03.2021, they have supplied [a] total 2260 M (M- 1000 Cigarettes) to M/s R.J. Trading Co., Delhi, out of which goods total 1968 M of 7 (Seven) invoices were returned by M/s R.J. Trading Co. vide their Debit Notes no. RJ 1 to RJ 7 all dated 09.03.2021 as detailed in Annexure-A attached to this Panchnama. The officers in presence of we the panchas verify the said stock of returned goods and find the same in order and also verify other stock of cigarettes and find the same in order and as per records. On being asked by the officer regarding the payments

received and made to M/s R.J. Trading Co. by him, Sh. Chanumal informs that duri the period from 12.10.2020 to till dated, they have supplied the goods valuing Rs. 43,82,38,044/- and out of which, they have received [the] payment through RTGS of Rs. 40,84,95,964/- till 11.03.2021 and since the goods valuing Rs. 2,03,66,354/- have been returned and as on date, Rs. 93,75,726/- is the remaining amount to be received from the said party in Delhi.

The officers in presence of we the panchas withdraws the documents relating to returned goods from M/s R.J. Traders under the reasonable belief that the same will be helpful in the investigation of the case. The said documents are enclosed with this panchnama as GST – INS – 02."

5.5. Furthermore, the transporter i.e. Shrinath Cargo (P) Ltd. who had transported the goods of M/s Mahadev Agencies to RJT's premises also had its premises searched on 13.03.2021. In the panchnama, drawn up at the time of the search, inter alia, the following was recorded. [See PDF page 551 of the paper book]

"On being asked about bills/invoices related to M/s Mahadev Agencies (GSTN: xxx) and M/s R.J. Trading Co. (GSTN: xxx) Shri Kirtan Pandya informs the officers that they don't keep any invoices because they return the original invoices along with goods and delivery slip to [the] consignee of goods after confirmation of payment of freight charges. The officers also did not find any invoices during the search proceeding.

On being asked about the consignment related to M/s Mahadev Agencies that was returned from M/s R.J. Trading Co. Shri Kirtan Pandya informs the officers that 7 lorry receipts (LR Nos. 0024982, 0024985, 0024986, 0024987, 0024988, 0024989 and 0024990) having 87 units (no. of parcels) related to goods of M/s Mahadev Agencies reached this office cum godown yesterday i.e. 12.03.2021 approx at 11:00 hrs. Further, Shri Kirtan Pandya informs the officers that Shri Ramesh Panchal, [the] delivery office in charge made [a] call to M/s Mahadev Agencies on their mobile no. xxx on 12.06.2021 approx at 11:30 hrs to collect their consignment. Further, Shri Kirtan Pandya informs that the officers approx. 15:15 hrs to 18:30 hrs M/s Mahadev Agencies collected their consignment from the godown of M/s Shrinath Cargo (P) Ltd. situated at basement "Sahajanand Park", Nr. Police Commissioner's Office, Shahibaug, Ahmedabad – 380004, Gujarat in respect of 7 lorry receipts."

5.6. It is in the background of aforesaid facts, circumstances and assertions that submissions were advanced in the matter.

**Submissions made on behalf of RJT:**

6. Mr. Manish, broadly, made the following submissions.

i. There was no investigation pending before CGST Commissionerate, Delhi North concerning RJT and therefore, the search, seizure and authorization issued by respondent no. 4 was unlawful.

ii. The respondents have failed to place on record any document, which would show, that power had been delegated to respondent no. 5 i.e. Inspector (Anti Evasion), CGST, Delhi North to seize the goods. There is a marked difference between authorization (the expression found in Section 67(2) of the CGST Act) and delegation of power. Since there was no valid authorization, in favour of respondent no. 5, he had, in law, no power to seize the goods.

iii. The power to search and seize goods, in terms of provisions of Section 67(2) of the CGST Act, could have only been exercised by a proper officer not below the rank of Joint Commissioner either pursuant to an inspection carried out in terms of subsection (1) of the very same section or otherwise, where he had reasons to believe that any goods liable for confiscation or any documents or books or things which, in his opinion, would be useful for or relevant to proceedings under the said Act are secreted in any place. The proper officer, in turn, under the provisions of Section 67(2) is authorised, albeit, in writing to confer upon any other officer of central tax to search and seize. Furthermore, under the first proviso, of Section 67(2), the proper officer or such officer as authorised by him has been given the power to serve an order either on the owner or custodian of goods, to not remove, where it is not practicable to seize any such goods, the officer or e, part with, or otherwise deal with the goods

except with the previous permission of such office wherever it is n practicable to seize any such goods.

iv. The exercise of powers under this provision was flawed on several counts. First, since goods and documents were found in the registered premises of RJT, they were not secreted in any place as contemplated under the said provision. Second, before exercising powers of search and seizure the proper officer was required to form reasons to believe that the goods were liable for confiscation or any documents or books or thing useful for or relevant to any proceedings under the CGST Act had been secreted. Third, the power of search and seizure could only have been exercised by an officer, not below the rank of Joint Commissioner or any other officer who had been duly authorised by the proper officer. None of the ingredients which are prerequisites for the exercise of powers under Section 67(2) of the CGST Act, were present. In other words, the impugned order of prohibition has been issued without authority of law and jurisdiction.

v. The reason trotted by the respondents for carrying out the impugned actions is predicated on an investigation carried out at the instance of Chief Commissionerate, Meerut in respect of some persons/entities including an entity going by the name M/s Mridul Tobie Inc. who is said to have been supplied goods by RJT. It is claimed that an enquiry was triggered against tobacco leaf suppliers who had purchased tobacco leaf from farmers but had not deposited the requisite tax in consonance with the reverse credit mechanism. The stand of the respondents has several anomalies. Firstly, RJT is in the business of purchasing and supplying cigarettes against deposit of requisite tax. Secondly, if verification had to be conducted at the behest of Chief Commissionerate, Meerut a verification warrant could have been issued under Section 71 of the

CGST Act; there was, therefore, no need to issue a search warrant again RJT under Section 67(2) of the very same Act. Thirdly, the other reason given is, that one of the transporters i.e. M/s Sunny Tempo Transport was not found at its principal place of business. In this context, it is important to note, RJT has not made any supplies to M/s Mridul Tobie, the services of M/s Sunny Tempo Transport were used by RJT to make supplies to another entity i.e. M/s Pandokhar Food LLP. The requisite documents, i.e., e-way bills along with GPS track record showing loading and unloading of goods at the premises of M/s Sunny Tempo Transport have been filed with the rejoinder. The other allegation made by the respondents, which is, that the transporter i.e. M/s New Star Cargo which delivered the goods supplied by M/s Blue Water Agencies had not acquired a valid GST IN number is factually misleading. M/s New Star Cargo is registered as a goods transport agency and accordingly, a transport registration number is generated when an e-way bill is uploaded on the GST portal. Importantly, the CGST Commissionerate, Gautam Budh Nagar who ascertained the genuineness of the aforementioned transporter i.e. M/s New Star Cargo had requested the Superintendent, CGST Amritsar to conduct an enquiry. Upon summons being issued on 10.03.2021, a statement of the concerned person was recorded, whereby, he explained how goods were transported. Inter alia the following was recorded.

> "Question: Is this GR issued by you/your firm?
>
> Answer: Yes. It can be seen from [the] Transport document/GR Booklet/Book which I have brought with me.
>
> Question: Please tell the type of vehicle used for transportation of goods in question.
>
> Answer: The vehicle is Bus bearing no. HR 68 B 1447. This bus belongs to me and is run from Amritsar-Delhi-Amritsar.

Question: Are goods mentioned in GR No. 958 dated 04.03.2021 was[s were] actually transported to Delhi.

Answer: Yes. All the goods mentioned in GR No. 958 dated 04.03.2021 [were] actually transported to Delhi from my Bus bearing HR 68 B 1447.

Question: Do you know the supplier of goods M/s Blue Water Agencies?

Answer: I know M/s Blue Water Agencies. The firm is my regular client. He is [a] supplier of cigarettes.

Question: Your GSTIN is not valid. What do you have to say about this?

Answer: I use to generate part B of [the] e-way bill wherever required from this ID only. My ID is functional.

Question: So, this is basically e-way ID, not GSTIN.

Answer: I am not aware of this technically. Whenever any supplier asked me for my GSTIN for transportation of goods I gave them this no. and till date, no one raised any objection.

Question: How was the order placed?

Answer: Telephonically.

Question: Who placed the order?

Answer: Employee of firm Sh. Vishal.

Question: Whether you checked the goods at the time of receipt from [the] party?

Answer: Yes We open all boxes and do check. The goods sent on 04.03.2021 through GR No. 958 was also checked at the time of receipt from [the] party and was found containing[ sic: to contain] cigarettes.

Question: How is the freight charges determined?

Answer: Freight charges is Rs. 130/- per box and includes delivery of recipient door Normally a box contains 24 small boxes and each small box contains 20 box[sic: boxes].

Question: Whether Insurance, [is] also included in consideration?

Answer: No we do not insure goods.

Question: What is the mode of payment?

Answer: We received all payment[s] in our Bank account maintained w IDBI at Court Road, Amritsar.

Question: Please tell me the loading and unloading point of goods. Whether you received goods from supplier's business place and delivered the same to recipient business place? (end to end)

Answer: No. I received the goods from [the] supplier in my office at Railway station Amritsar and unloaded it from Bus in the parking near GPO, Red Fort, Delhi. Further, these goods were transported in small cargo vehicle[s] and delivery given to R.J. Trading Company, Saroop Nagar, Delhi. Mostly we arrange vehicle from Market from one Sh. Jai Prakash, Mobile No. 9213207229 but sometime[s] if we could not arrange the vehicle from [the] market then we contact an employee of R.J. Trading Company Sh. Kirat, Mob No. 9053430326 to provide [a] vehicle to receive goods from Bus parking at Red fort. We do not taking[sic: take] any kind of receiving. It is telephonically confirmed between supplier's[sic: suppliers] and recipient[s].

Question: Whether the permit of Bus allows to carry[sic: carrying] sensitive goods?

Answer: [A] Bus permit is to carry [a] passenger. All buses commuting between Delhi: Amritsar: Delhi carry commercial goods. The restriction is only not to increase the height of bus with goods and we do not transport goods on roof of [the] bus. We always transport goods inside the bus."

vi. The respondents have deliberately withheld the information that at the behest of GST Commissionerate, Gautam Budh Nagar, an enquiry was conducted by CGST Amritsar as indicated above on 10.03.2021 which revealed that goods supplied by M/s Blue Water Agencies had been delivered to RJT. Besides this, RJT has also placed on record, a video clip showing loading and unloading of goods. In a nutshell, the search and seizure and the resultant issuance of the impugned prohibition order and resumption of documents had no legal basis: the goods detained are supported by relevant documents i.e. e-invoices/tax invoices/e-waybills and transporter challans, and the respondents have made enquiries both with the suppliers as well as the transporters all of which only goes to establish that there was no attempt to carry out "illicit trade or supply" of goods.

vii. In support of his submissions, Mr. Manish has relied upon the following judgements.

a) Valerius Industries vs. Union of India, 2019 (30) G.S.T.L. 15 (Guj.)
b) Golden Cotton Industries Vs. Union of India, 2019 (29) G.S.T.L. 587 (Gui.)
c) Mahendra Kumar Indermal Vs. Dy. Asst. Commr. (ST), Vijaywada reported as 2020 (37) G.S.T.L. 168 (A.P).
d) Exim Incorporation Vs. Union of India & Ors., 2020-TIOL-2 124-HC-MUIvI-CUS
e) Ganesh Yadav Vs. Union of India, 2015 (320) E.L.T. 711 (All.)
f) Subhlmpex Vs. Union of India, 2018 40-4 1 (14) G.S.T.L. 4 (Del.)
g) G.B. International Versus Union of India, 2017 (347) ELT 406 (Del.)
h) Vega Auto Accessories (Pvt.) Ltd. Vs. Registrar, 2018 (14) G.S.T.L. 7 (Del.)
i) Pioneer Corporation Vs. Union of India, 2016 (340) E.L.T. 63 (Del.)
j) Anluir Carrier Express Cargo Service Vs. Union of India, 2018 (16) G.S.T.L. 354 (All.)

**Submissions advanced on behalf of the revenue:**

7. On the other hand, Mr. Singh made the following submissions:

i. The trigger for exercising power under Section 67(2) of the CGST Act was circular no. 1/2021 dated 31.01.2021 issued by CGST Agra and circulated by Chief Commissioner Office, Meerut. This circular was issued on account of non-payment of GST on a reverse charge basis by an

entity going by the name M/s Mridul Tobie Inc. M/s Mridul Tobie In was purchasing tobacco from registered and unregistered suppliers who were essentially farmers, without paying, tax as indicated above, on reverse charge basis. Thus, while investigating M/s Mridul Tobie Inc., it emerged, that RJT was one of its suppliers.

ii. This led to Joint Commissioner (AE), Gautam Budh Nagar writing to the Additional/Joint Commissioner (AE), CGST Delhi North Commissionerate on 05.03.2021, seeking assistance in investigating RJT. The request made was to conduct a search against RJT under Section 67(2) of the CGST Act.

iii. It is in this background, the officers of CGST Gautam Budh Nagar Commissionerate with the assistance of CGST Delhi North Commissionerate conducted a search at RJT's premises on 05.03.2021 and seized some goods as no documents/records could be produced to prove the genuineness of the purchase transaction. The documents produced such as sales bills, purchase bills, GST challan files which were resumed during the search, prima facie, were not found relevant vis-a-vis the goods available in stock with RJT. The stock register which ought to have been maintained by RJT at the premises was not provided. Therefore, based on a reasonable belief that the goods found lying at RJT's premises were not backed by corresponding purchase documents, they were "seized".

iv. The officer who conducted the search and seized the goods and documents had been conferred with the necessary authorization in the prescribed form [GST INS – 01] by one, Mr. Rajender Jindal, Additional Commissioner. The authorization was given on 05.03.2021 in favour of one, Mr. Naveen Sharma, Inspector CGST.

v. The investigations conducted into M/s Mridul Tobie Inc.'s affairs ga the Additional Commissioner, who authorized the search at RJT's premises, "reasons to believe" that the goods that may be found therein were liable to be confiscated. Therefore, the exercise of power under Section 67(2) of the CGST Act was in consonance with the provisions of law.

vi. RJT was required to maintain the stock register on a real-time basis. The obligation to maintain a stock register is embedded in Section 35 of the CGST Act read with Rule 56 of the Rules. The mere fact that RJT's stock register was seized, on 14.02.2021, by officers of DGGI (AZU) cannot absolve RJT of the obligation to maintain a stock register. RJT could have applied to DGGI (AZU) for copies of the seized documents including the stock register.

vii. Investigations, as indicated above, in RJT's case are only being carried out by CGST Noida and that officers of CGST Delhi North Commissionerate were only assisting the officers of CGST Noida [when the search was carried out on 05.03.2021] since RJT's premises fell within the territorial jurisdiction of CGST Delhi North Commissionerate. The "seizure action" was taken by CGST Delhi North Commissionerate. Thereafter, on an application of RJT, a provisional release order was passed in its favour on 12.05.2021.

viii. The 12.05.2021 order for provisional release is passed in line with the provisions of Section 67 of the CGST Act read with Rule 140 of the Rules. These provisions vest no discretion on the competent authority insofar as terms and conditions for provisional release of goods are concerned. In any event, the order passed is appealable under Section 107 of the CGST Act, and hence, cannot be challenged in the present writ petition.

ix. In support of his submissions, Mr. Singh has relied upon the following judgement.

a) State of Uttar Pradesh vs. KAY PAN Fragrance Pvt. Ltd., 2019 (31) G.S.T.L. 385 (S.C.).

**Analysis and Reasons:**

8. We have heard learned counsel for the parties and carefully examined the record. According to us, the pivotal issue, which arises for consideration, is: as to whether or not, requisite statutory ingredients were present to enable the concerned respondents to exercise the power vested upon them under Section 67(2) of the CGST Act. Since we are exercising jurisdiction Article 226 of the Constitution, it is this, and only this question, that we intend to address ourselves to, and not delve upon aspects, which may require further investigation.

8.1. But before we examine the issue at hand, certain admitted facts need to be noticed as it would provide a backdrop in which power under Section 67(2) of the CGST Act has been exercised by CGST Delhi North Commissionerate.

i. RJT, which is a partnership firm, inter alia, is in the business of purchasing and selling cigarettes. The cigarettes are purchased by RJT, from what appears to be wholesale dealers of manufacturers, such as ITC Ltd.

ii. On 14.02.2021, DGGI (AZU), paid a visit at the RJT's principal place of business to conduct a search. Upon carrying on a search, the officers found stored 1,08,000 cigarette sticks, that were duly accounted for. However, for further investigations, DGGI (AZU), amongst other documents, seized RJT's file containing stock details.

iii. On 05.03.2021, a communication was addressed by Joint Commissioner (AE) Gautam Budh Nagar to the Additional/Joint Commissioner (AE), CGST Delhi North Commissionerate, seeking assistance in carrying out physical verification i.e. establishing the existence of L2 category supplier of an entity, which was being investigated by his office. The entity, which was being investigated, was M/s Mridul Tobie Inc. and its L2 supplier, whose existence was to be established, was none other than RJT. This communication also requested that a search be conducted at the principal place of business of RJT (as detailed out therein) since it would aid in investigating the affairs of M/s Mridul Tobie Inc. Pertinently, this communication was not filed with the counter-affidavit and it was submitted to the Court only when a query was raised as to what was the basis for issuance of authorization of even date, i.e., 05.03.2021 by the Additional Commissioner, CGST Delhi North Commissionerate.

iv. The stated stand of CGST Delhi North Commissionerate is that it was only assisting CGST Gautam Budh Nagar/Noida and that it had conducted the search at RJT's premises at the behest of CGST Gautam Budh Nagar/Noida.

v. On 05.03.2021, when the search was conducted at RJT's premises, three documents were generated, i.e., the panchnama, the order for seizure of documents in Form GST INS – 02 and an order of prohibition in Form GST INS – 03. Pertinently, the panchnama, which broadly recorded as to how the search was carried out and what transpired during search recorded, inter alia, the following.

a) 190 corrugated boxes containing cigarettes were found.

b) Some documents were found in a wooden almirah, which we resumed.

c) One of the employees of RJT, i.e., Shri Jaskirat Singh was asked to produce the stock register maintained at the premises [which he could not provide], which led to the formation of "reasonable belief", that the said goods were meant for "illicit trade/supply". This led to the detention of the said goods and the generation of "GST INS – 02" dated 05.03.2021. The goods i.e. 190 cartons were entrusted to Shri Jaskirat Singh for being kept in safe custody.

d) The order of seizure of documents was passed by one, Mr. Naveen Sharma, Inspector, CGST Delhi North Commissionerate. The documents seized comprised sale bills, purchase bills, KYC file, cash bills, purchase register, sale register, bank statements, cash sales and GST challan file. The relevant portion of the said order reads as follows. [See page 142 of the paper book]

> "And on scrutiny of document/papers and good[s] found during the search, I have reasons to believe that certain goods liable to confiscation and documents useful/relevant to proceedings under this Act are secreted in [the] place mentioned above.
>
> Therefore, in [the] exercise of the powers conferred upon me under sub-section (2) of Section 67 of the CGST Act, 2017.
>
> I hereby seize the following goods and documents
>
> A. Details of goods detained – as per attached inventory list dt. 05.03.20 (01 page)
>
> B. Details of documents seized.
>
> **xxx xxx xxx**"

e) Likewise, the order of prohibition dated 05.03.2021 qua the 190 cartons of cigarettes containing 22,26,000 sticks was also passed

by the same person i.e., Mr. Naveen Sharma, Inspector, CGS Delhi North Commissionerate. This order also uses the same language, as is found in the order of seizure.

9. Given the aforesaid facts, one needs to examine, as indicated above, whether or not, the exercise of power by CGST Delhi North Commissionerate under Section 67(2) of the CGST Act can be sustained.

9.1. A careful perusal of Section 67 of the CGST Act would show that it confers, on the proper officer, not below the rank of a Joint Commissioner, power of inspection, search and seizure. Subsection (1) of Section 67 deals with, inspection. This power can be exercised only if the proper officer has reason to believe that eventualities provided in subclause (a) or (b) of subsection (1) of Section 67 have occurred. Subsection (2) of Section 67, on the other hand, confers, on the proper officer, not below the rank of the Joint Commissioner, the power to search and seize goods, documents or books or things, either pursuant to an inspection carried out under subsection (1) or otherwise, if he has reason 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 the CGST Act are secreted in any place. The proper officer is empowered to either carry out the search and seizure himself or authorize in writing, any other officer of Central Tax, to carry out such search and seizure.

9.2. The first proviso to subsection (2) of Section 67 states that wherever 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 prior permission of such officer.

9.3. What is crystal clear upon a perusal of the provisions of subsection (1) and (2) of Section 67 is that the expression "reasons to believe" controls the exercise of powers under the said provisions. Therefore, unless the basic jurisdictional facts exist, in a case, the power conferred under subsections (1) and (2) of Section 67 cannot be exercised. The expression "reasons to believe" is found in various statutes concerned with revenue laws, and therefore, has undergone a forensic analysis, metaphorically speaking, by Courts, in several cases. The width and amplitude of this expression have been expounded upon by Courts, in particular, the Supreme Court. Therefore, it is well-established that the expression reason to believe does not carry the same connotation as say reason to suspect; the standard of belief is that of a reasonable and honest person and not one based on surmises and conjectures, or mere suspicion. It is open to the concerned authority to form a prima facie view based on evidence that may be direct or circumstantial. In other words, the belief of the concerned authority should be based on some actionable material that he has had an opportunity to peruse. Furthermore, the material placed before the concerned authority, i.e., the proper officer should have nexus with the formation of the belief. [See: ***ITO vs. Lakhmani Mewal Das***, 1976 3 SCC 757; ***Ganga Saran & Sons Pvt. Ltd. vs. ITO,*** 1981 3 SCC 143; and ***Synfonia Tradelinks (P.) Ltd. vs. Income-tax Officer***, [2021] 127 taxmann.com 153 (Delhi)]

9.4. Concededly, in this case, the search and seizure at RJT's premises; was not conducted pursuant to an inspection carried out under subsection (1) of Section 67. The conduct of search and seizure, in this case, appears to have been carried out under the cover of the omnibus term 'otherwise' provided in subsection (2) of Section 67.

9.5. However, what is clear is that before the proper officer not below the rank of Joint Commissioner decides to either conduct the search and seizure himself

or authorize another person in writing to do the same, he should have, reasons believe, that "any" goods are liable to be confiscated or "any" documents or books or things which, in his opinion, are useful or relevant to any proceedings under the CGST Act, are secreted in "any" place. In this case, as noted above, the search and seizure was conducted by an Inspector of the CGST Delhi North Commissionerate based on the authorization of the Additional Commissioner of the same department i.e. CGST Delhi North Commissionerate. Admittedly, in the instant case, no investigations were carried out against RJT by the CGST Delhi North Commissionerate. The authorization, as noticed above, (and qua which there is no dispute) was based on the communication dated 05.03.2021 addressed by Joint Commissioner (AE), Gautam Budh Nagar to the Additional/Joint Commissioner, CGST Delhi North Commissionerate. A careful perusal of this communication would show (something that we have noticed hereinabove) that the Joint Commissioner (AE), Gautam Budh Nagar wanted to know, in connection with the investigation of an entity going by the name M/s Mridul Tobie Inc., as to whether RJT, which was its L2 category supplier, actually existed. There is nothing stated in the document which could have formed the basis for issuing an authorization of even date by the Additional Commissioner CGST Delhi North Commissionerate. In other words, the communication dated 05.03.2021 gives no clue that "any" goods of RJT were liable for confiscation or "any" documents, or books or things which would be useful for or relevant for proceedings under the CGST Act had been secreted to any place; a prerequisite for the formation of belief, and therefore, for the exercise of powers concerning search and seizure.

9.6. As noticed above, both the order of seizure of documents and the order of prohibition, simply replicate the language of subsection (2) of Section 67 and the corresponding Rule i.e. Rule 139(2). Thus, according to us, the very trigger for conducting the search [i.e. the authorization issued by the Additional

Commissioner, CGST Delhi North Commissionerate] was flawed a unsustainable in law.

9.7. Besides this, it is relevant to note that the panchnama categorically states that because one of the employees of RJT, i.e., Shri Jaskirat Singh was unable to produce the stock register, a prima facie view was formed, that the goods found at RJT's premises were to be used for illicit trade/supply. This aspect has to be seen in the light of an undisputed fact that on 14.02.2021, the DGGI (AZU) had seized RJT's file containing stock details.

9.8. Therefore, there was a reasonable explanation as to why the stock register was not found at the premises on the day [ i.e. 05.03.2021] when the search was conducted by CGST Gautam Budh Nagar/Noida with the assistance of the Delhi North Commissionerate. The argument advanced on behalf of the respondents that RJT could have sought copies of the file containing stock details or maintained fresh register glosses over the fact that the explanation given was genuine and reasonable. In our opinion, what was important for the respondents to ascertain: whether the goods, i.e., 190 cigarette cartons which were found in RJT's principal place of business, had been delivered there pursuant to a genuine purchase transaction. As is well-known, stock registers are not primary documents.

9.9. The case set up by RJT that primary documents evidencing the purchase transaction such as e-invoice, tax invoice, e-way bill and transporter challans, were made available, has gone unrebutted except, a vague plea that documents found were unrelated. Besides this, on behalf of RJT, it has been correctly submitted that Section 35 on which reliance was placed by the respondents in support of their plea that maintenance of stock register was mandatory, states in no uncertain terms, in the second proviso, that the registered person (in this case, RJT) may keep and maintain such accounts (which includes stock of

goods) and other particulars in electronic form, in such manner, as may prescribed. RJT claims [and there is no rebuttal qua this aspect], that details of stock were available, in electronic form. [See Annexure P-9 appended on page 100 of the paper book]

10. Furthermore, what the respondents have not explained (something which they should have dilated upon) is: why the documents seized on that date had nothing to do with the 190 cartons found at the premises of RJT. This attains significance as RJT has made specific averments in the writ petition that supporting documents such as e-invoice, tax invoice, e-way bills and transporter challans were available; an aspect we have noted above. The respondents, apart from making a bald assertion that the documents seized were not relevant, have not dwelled on this aspect of the matter or, filed copies of documents and registers which included sales and purchase registers that were resumed by them. What is even more disconcerting is that RJT's specific assertion in paragraph 13[1] of the writ petition, that a consignment of cigarettes [packed in 92 cartons comprising 10,94,000 sticks] was received while the search was being conducted on RJT's premises, has received no clear response from the respondents. This consignment forms a substantial part of the goods qua which the impugned prohibition order has been passed. For the moment, as indicated above, we are not even delving into the assertions made by the respondents that one of the transporters i.e. Sunny Tempo Transport was not in existence, although, as noted above, RJT has provided an explanation, vis-a-vis this

[1] "Paragraph 13 of the writ petition is extracted hereafter.

13. During the search the Petitioner firm received 92 cartons of different variety of cigarette containing total number of 10,94,000 sticks of cigarettes and the consignments has been purchased from M/s. Blue Water Agencies and covered against the e-invoice bearing No. C393 and C394 both dated 04.03.2021. After the receipt of this consignment the total goods in the stock of the Petitioner firm was at the time containing 190 cartons of the cigarettes containing total 22,26,000 number of sticks. The details of stock report on 05.03.202 1 along with invoices, e-way bill and challans is annexed and marked herewith as Annexure P- 10(Colly)."

transporter as well as concerning the other transporter i.e. New Star Cargo. R has also tried to buttress its submission by filing the statements recorded by the respondents of the concerned persons in the aforementioned organizations to establish that subject goods were indeed purchased and transported to RJT's premises. [See PDF page 521 of the paper book.]

11. As indicated at the beginning of the discussion, the scope of the writ petition has been confined by us to the examination of the issue, as to whether, the authorization for conducting search and seizure at RJT's premises had been given bearing in mind, the prerequisites provided in Section 67(2) of the CGST Act.

12. Having regard to the foregoing discussion, we are of the opinion that the Additional Commissioner, CGST Delhi North Commissionerate exercised his powers for according authorization to conduct search and seizure, at RJT's premises, even though the jurisdictional ingredients were absent. The request of Joint Commissioner (AE), Gautam Budh Nagar conveyed through the communication dated 05.03.2021, was only to ascertain as to whether RJT, which was the L2 supplier of M/s Mridul Tobie Inc., was in existence. There was no independent application of mind by the Additional Commissioner, CGST Delhi North Commissionerate.

13. The officers concerned should bear in mind that the search and seizure power conferred upon them, is an intrusive power, which needs to be wielded with utmost care and caution. The legislature has, therefore, consciously ring-fenced this power by inserting the controlling provision, i.e., "reasons to believe".

14. Although it has been argued on behalf of RJT, that a perusal of both, the order of prohibition and seizure, would show that the inspector has exercised the power on his own and not based on the authority of the proper officer i.e. the Additional Commissioner, we need not delve on this aspect any further, as it

appears, the concerned officer, i.e., the inspector used a prescribed form witho taking the trouble of modifying having known that he was not the proper officer but someone who was authorised to act on behalf of the proper officer. Because we have concluded, that the authorization accorded by the Additional Commissioner is legally untenable, this facet of the case need not be, dwelled upon any further. However, the respondents would do well, in future, to bear in mind that prescribed forms i.e. GST IN - 02 and GST IN - 03 are for guidance, and that necessary modification is made while passing orders depending upon who is conducting search and seizure.

15. For the very same reason, we are also of the view, that the application filed on behalf of RJT [i.e. CM No. 16668/2021] which inter alia seeks a direction for setting aside the order dated 12.05.2021, directing the provisional release of goods, based on the terms contained therein, need not detain us having regard to the view taken by us hereinabove.

**Conclusion:**

16. Accordingly, the search and seizure conducted by CGST Delhi North Commissionerate are declared unlawful. Consequently, both the orders of seizure and prohibition dated 05.03.2021 are set aside. The subject documents will be released to RJT, at the earliest. Liberty is, however, given to the concerned officer to retain copies of the same in case they are required for carrying out further investigations against RJT.

17. The writ petition and pending applications are disposed of in the aforesaid terms. There shall, however, be no order as to costs.

18. All concerned will act on a digitally signed copy of the judgement.

**RAJIV SHAKDHER, J.**

**TALWANT SINGH, J.**

**JULY 20, 2021**

*Click here to check the corrigendum, if any*