IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 17.08.2023

\+ **W.P.(C) 6739/2021**

DEEPAK KHANDELWAL PROPRIETOR M/S SHRI SHYAM METAL ..... Petitioner

versus

COMMISSIONER OF CGST, DELHI WEST & ANR. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Rajesh Jain, Mr. Virag Tiwari & Mr. Ramashish, Advs.

For the Respondents : Mr. Harpreet Singh, SSC with Ms. Suhani Mathur & Mr. Jatin Kumar Gaur, Advs.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying that directions be issued to the respondents to unconditionally release the two silver bars (weighing 29.5 Kgs. and 14.5 Kgs. respectively); ₹7,00,000/- Indian currency; and, Mobile Phones, which were seized by the respondents from the residential premises of the petitioner. The petitioner also prays that the search of his residential premises and seizure effected, be declared illegal.

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Factual Context

2. The petitioner carries on business of trading in non-ferrous metals, *inter alia*, in the name of his sole proprietorship concern, Shri Shyam Metal. He is registered under the Central Goods and Services Tax Act, 2017 (hereafter '**the Act**') under the registration: GSTIN-07AGCPK1126B2Z5.

3. On 28.01.2020, a search was conducted at the petitioner's residence, House No. 3-4, Pocket 6, Sector-24, Rohini, Delhi, under Sub-section (2) of Section 67 of the Act. During the aforementioned operations, certain items and currency were seized from the ground floor of the petitioner's residence. The relevant extract of the order of seizure (Form GST INS-02) listing out the goods and items seized by the respondent authorities, is reproduced hereinbelow:

"**A) Details of goods seized:**

Sr No.	Description of Goods	Quantity/ Units	Make /Mark or Model	Remark
01	Silver Bar	Silver Bar 29872 (29.5 kgs)	2017	
02	Silver Bar	Silver Bar 14948(14.5 kgs)	2018	

B) Details of Books/Documents/ things seized:

Sr. No.	Description of books/ documents/ Equipments things seized	Page No.
1.	Sale Bill Book	251-300
2.	Axis Bank Cheque Book 917020084690138	125593-125605
3.	PNB Cheque Book	260829-260920

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	0155002106140506	
4.	PNB Cheque Book 0155002106140506	610455-610460
5.	PNB Cheque Book 0617000100149333	705753-705770
6.	PNB Cheque Book 0617000100292510	929211-929250
7.	PNB Cheque Book 6582002100002424	034980-034990
8.	Green Colour Saraswati Note Book	01-01(Written Page)
9.	Red Colour Redmi 6A Mobile	IMEI 1 No. : 869956041874739 IMEI 2 No. : 869956041874747
10.	Blue Colour Redmi 6A Mobile	IMEI 1 No. : 869956048349958 IMEI 2 No. : 869956048349966
11.	One Plus Brand Mobile	IMEI 1 No. : 99001345485110 IMEI 2 No. : 869430049682205
12.	IPhone 11 Pro	IMEI 1 No. : 353844103083170 IMEI 2 No. : 353844103043356
13.	CASH INDIAN Currency	7 Lakh (10*50*100+50*50*100+ 500*4*100+2000*1*100)
14.	Kachha Parchi	Yellow Packet
15.	Stamps	M/s. Nitin Metal, M/s. Adi Shree, M/s. Shree Ganesh Trading Co.,"

"

4. Thereafter on 29.01.2020, the petitioner was arrested by the Central Tax Officers of GST Commissionerate, North Delhi, as it was alleged that he had committed offences, punishable under Clause (i) of

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Sub- section (1) of Section 132 of the Act. The petitioner was released on bail on 21.03.2020 by the learned Chief Metropolitan Magistrate, Patiala House Courts, New Delhi.

5. The Sales Tax Officer Class II/AVATO, Ward 30: Zone 1: Delhi (Delhi State GST Officer) issued a notice under Section 74 of the Act on 10.11.2020 proposing a demand of ₹24,20,900/- including penalty of a sum of ₹12,10,450/-. The petitioner responded to the said notice by his letter dated 16.11.2020. The petitioner contended that, no reliance was placed on any of the documents, Indian currency, or any other items which were seized on 28.01.2020, as detailed in the seizure report, in the said notice.

6. The petitioner, by letter dated 23.03.2021, requested the Additional Commissioner, Central Tax GST, West Delhi, to release the goods, documents and cash seized from his premise on 28.01.2020. The petitioner contended that even if the proviso to Sub-section (7) of Section 67 of the Act was applicable, no notice was issued with respect to the seizure of goods, within a period of six months from the date of seizure. Therefore, the seized goods were liable to be restored.

7. The petitioner has filed the present petition under Article 226/227 of the Constitution of India, being aggrieved by the failure on the part of the respondents to release his goods even after lapse of one year from the date of the seizure.

Submissions

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8. It is the petitioner's case that the proper officer does not have any powers under Section 67 of the Act to seize currency as the same is not 'goods' as defined under the Act. The petitioner contends that the proper officer has the power to seize the goods under Sub-section (2) of Section 67 of the Act only if he has reasons to believe that the same are liable for confiscation. The petitioner also claims that the goods seized are liable to be returned if no notice in respect of the said goods is served within a period of six months from the date of seizure of the said goods.

9. It is contended that since no notice under Sub-section (2) of Section 67 of the Act was issued in respect of the seized silver bars, which fall within the definition of goods, within the stipulated period of six months, the said goods are liable to be released.

10. Mr. Rajesh Jain, learned counsel appearing for the petitioner contended that the Sub-section (2) of Section 67 of the Act is *pari materia* Section 105 and Sub-sections (1), (2) and (3) of Section 110 of the Customs Act, 1962, and referred to the decision of the Supreme Court in ***I.J. Rao, Asstt. Collector of Customs & Ors. v. Bibhuti Bhushan Bagh & Another: (1989) 3 SCC 202***. On the strength of the said decision, he contended that if a notice is not given within a period of six months from the date of seizure of the goods and the said period is not extended within the said period of six months, the seized goods are liable to be returned.

11. He submitted that currency neither fell within the definition of

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the terms ‘goods’ nor could be considered as ‘things’. He contended that the term ‘things’ was required to be construed by applying the doctrine of *ejusdem generis*, as taking colour from the preceding words, ‘documents’ and ‘books’.

12. Mr. Harpreet Singh, learned counsel appearing for the Revenue countered the contentions advanced on behalf of the petitioner. He contended that silver bars and cash seized by the proper officer were not covered under the definition of ‘goods’ and therefore, there was no requirement for issuing any show cause notice for confiscation of the same. He submitted that the silver bars and cash were seized as ‘things’ and not as ‘goods’ that were liable for confiscation. He referred to the definition of the word ‘goods’ under the Act and contended that ‘money’ and ‘securities’ were excluded from the said definition. He contended that silver bars were ‘securities’ and were seized as such.

13. He countered the submission that the proper officer did not have any power to seize cash. He submitted that the proper officer had the power to seize ‘things’ under Sub-section (2) of Section 67 of the Act and the said term was required to be interpreted in an expansive manner. He referred to the decision of the Madhya Pradesh High Court in ***Kanishka Matta v. Union of India & Ors.: 2020 SCCOnline MP 4564*** decided on 26.08.2020 in support of his contention.

Reasons & Conclusion

14. The principal controversy to be addressed in the present petition

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is whether the proper officer has the power to seize the currency and other valuable assets under Section 67 of the Act, even though he has no reason to believe that the same are liable for confiscation. The controversy, essentially, relates to interpretation of Section 67 of the Act. The said section is set out below:

> "67. **Power of inspection, search and seizure.**— (1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—
>
> (a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or
>
> (b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,
>
> he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.
>
> (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

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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 authorised 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) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under subsection (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment

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of applicable tax, interest and penalty payable, as the case may be.

(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.

(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word ―Magistrate, wherever it occurs, the word ―Commissioner were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

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> (12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier."

15. In terms of Sub-section (1) of Section 67 of the Act, the proper officer, not below the rank of Joint Commissioner, is empowered to authorize any officer of the central tax to inspect any place of business of a taxable person or persons engaged in the business of transporting or storing of goods. However, such inspection can be authorized only if the proper officer has reasons to believe that the taxable person has (i) suppressed any transaction relating to supply of goods or services or both; or (ii) suppressed the stock of goods in hand; or (iii) has claimed input tax credit in excess of his entitlement; or (iv) has otherwise contravened any provision of the Act or the Rules made thereunder, to evade payment of tax. Such inspection can also be authorized if the proper officer believes that any person who is engaged in the business of transporting goods, or operating a warehouse or a godown or any other place, is keeping goods that have escaped payment of tax or has kept his accounts or goods in such a manner, which is likely to cause evasion of tax payable under the Act.

16. It is apparent from the above, the power of inspection under Sub-section (1) of Section 67 of the Act is conferred to unearth any evasion of tax or any attempt to evade tax. Sub-section (1) of Section

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67 of the Act is not a provision for recovery of tax or for securing the same.

17. The power to seize goods is specified in Sub-section (2) of Section 67 of the Act. In terms of the said Sub-section, if the proper officer has reasons to believe that any goods, which are liable for confiscation, or any documents or books or things, which in his opinion will be useful or relevant for any proceedings under the Act, are secreted at any place; he may either search and seize the said goods, documents or books or things, or authorize any officer of the Central Tax to do so.

18. It is clear from the plain language of Sub-section (2) of Section 67 of the Act that only those goods can be seized, which the proper officer has reasons to believe are liable for confiscation. Insofar as seizure of documents or books or things is concerned, the same is permissible provided the proper officer is of the opinion that the said documents or books or things shall be useful or relevant to any proceedings under the Act.

19. The first proviso to Sub-section (2) of Section 67 of the Act provides that if it is not practical to seize such goods – that is, goods that are liable for confiscation – the proper officer or any officer authorized by him may direct the owner or custodian of the goods, not to remove or part with the same.

20. The second proviso to Sub-section (2) of Section 67 of the Act clarifies that insofar as seized documents or books or things are

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concerned, the same shall be retained only so long as it is necessary for their examination and for any inquiry or proceedings under the Act. It is, thus, clear that seizure of documents or books or things are only for the purpose of examination or inquiry or any proceedings under the Act. And, the seized documents or books or things can be retained only so long as it is necessary for the said purpose – for their examination, any inquiry, or proceedings under the Act.

21. Sub-section (3) of Section 67 of the Act further requires that documents or books or things as referred to in Sub-section (2) of Section 67 of the Act or any other documents or books or things produced by the taxable person or any other person "which have not been relied upon" for the issue of notice under the Act or Rules made thereunder shall be returned to such person, within the period not exceeding thirty days from the issue of such notice.

22. In terms of Sub-section (6) of Section 67 of the Act, the goods seized under Sub-section (2) of Section 67 of the Act are required to be released on provisional basis upon execution of a bond and furnishing of a security, in such manner and of such quantum, as may be prescribed or on payment of applicable tax, interest and penalty payable as the case may be.

23. In terms of Sub-section (7) of Section 67 of the Act where goods are seized under Sub-Section (2) of Section 67 of the Act and no notice, in respect thereof, is given within the period of six months of seizure of the goods, the goods are required to be returned to the

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person from whom the same were seized. This period of six months can be extended on sufficient cause being shown.

24. In terms of Sub-section (8) of Section 67 of the Act, the Government also has the power to specify goods, which are required to be disposed of by the proper officer, as soon as may be, after its seizure under Sub-section (2) of Section 67 of the Act. Such goods are required to be specified having regard to the perishable or hazardous nature of the goods, constraints of storage space, depreciation in the value of goods with the passage of time, or other relevant consideration.

25. In terms Sub-section (11) of Section 67 of the Act, the proper officer may seize accounts, registers or documents produced before him if he has reason to believe that any person has evaded or attempting to evade payment of tax. However, it is necessary for him to record the reasons in writing for seizure of the accounts, register or documents. However, such accounts, registers or documents can be retained only as long as it is necessary in connection with any proceedings under the Act or the rules made thereunder for prosecution.

26. The question whether the proper officer has any power to seize cash or other asset is required to be addressed bearing in mind the aforesaid scheme of Section 67 of the Act.

27. The expression ‘goods’ is defined in Sub-section (52) of Section 2 of the Act as under:

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> "(52) "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;"

28. The expression 'goods' covers all movable property other than 'money' and 'securities'. The expression 'securities' as defined in Sub-section (101) of Section 2 of the Act has the same meaning as assigned to it in Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956.

29. Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956 reads as under:

> "2(h) "securities" — include
>
> (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
>
> (ia) derivative;
>
> (ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;
>
> (ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002;
>
> (id) units or any other such instrument issued to the investors under any mutual fund scheme;
>
> (ii) Government securities;
>
> (iia) such other instruments as may be declared by the Central Government to be securities; and

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(iii) rights or interest in securities;"

30. It is at once clear from the above that silver bars being movable assets are not securities within the meaning of Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956. The contention that silver bars are 'securities', as advanced on behalf of the Revenue, is insubstantial. Although the definition of the term 'securities' is an inclusive definition, the same cannot be read in disregard of Sub-clauses (i) to (iii) of Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956 or the scope of that enactment. Plainly, as silver bars do not fall within the definition of 'securities' under Sub-section (101) of Section 2 of the Act read with Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956. Thus, silver bars are included in the term 'goods' as defined under Sub-section (52) of Section 2 of the Act.

31. Cash (Indian currency) is clearly excluded from the definition of the term 'goods' as the same falls squarely within the definition of the word 'money' as defined in Sub-section (75) of Section 2 of the Act

32. Having stated the above, we are of the view that it would not be apposite to construe the word 'things' under Sub-section (2) of Section 67 of the Act to be mutually exclusive to the term 'goods'. The term 'goods' as used in Sub-section (2) of Section 67, essentially, relates to goods, which are subject matter of supplies that are taxable under the Act. Admittedly, the goods that can be seized under Sub-section (2)

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of the Act are goods, which the proper officer believes are liable for confiscation. In this regard, it is relevant to refer to Section 130 of the Act, which provides for confiscation of goods and conveyances. Sub-section (1) of Section 130 of the Act specifies the goods and conveyances that may be liable for confiscation under the said Act and is set out below:

> "**130. Confiscation of goods or conveyances and levy of penalty.—** (1) Notwithstanding anything contained in this Act, if any person—
>
> (i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
>
> (ii) does not account for any goods on which he is liable to pay tax under this Act; or
>
> (iii) supplies any goods liable to tax under this Act without having applied for registration; or
>
> (iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
>
> (v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,
>
> then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122."

33. A plain reading of Clauses (i) to (iv) of Sub-Section (1) of Section 130 of the Act indicates that the goods, which are supplied or

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received in contravention of the provisions of the Act with the intent to evade payment of tax; goods which are unaccounted for and chargeable to tax; supply of goods chargeable to tax, by a taxpayer, without applying for registration; and cases where the taxpayer contravenes any provision of the Act with the intent to evade payment of tax, are liable for confiscation.

34. The word 'goods' as defined under Sub-section (52) of Section 2 of the Act is in wide terms, but the said term as used in Section 67 of the Act, is qualified with the condition of being liable for confiscation. Thus, only those goods, which are subject matter of or are suspected to be subject matter of evasion of tax. During the course of search under Sub-section (2) of Section 67 of the Act, the officer conducting the search may find various types of movable assets. Illustratively, in an office premises, one may find furniture, computer, communication instruments, air conditioners etc. Those assets although falling under the definition of 'goods' cannot be seized, if the proper officer has no reasons to believe that those goods are liable to be confiscated.

35. Sub-section (6) of Section 67 of the Act provides for provisional release of the goods so seized on payment of applicable tax, interest and penalty. This also indicates that the goods, which may be seized under Sub-section (2) of Section 67 are goods that are subject matter of evasion of tax or are supplies in respect of which the proper officer has reason to believe, taxes would not be paid.

36. Sub-section (7) of Section 67 of the Act mandates that the

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goods seized under Sub-Section (2) would be returned to the person from whose possession the goods were seized, if no notice in respect of those goods is issued within a period of six months. It is apparent that a notice in respect of such goods can be issued only where taxes, interest or penalty in respect of the said goods have not been paid or there are reasons to believe so.

37. If the goods are of the nature specified in Sub-section (8) of Section 67 of the Act, that is, are perishable or hazardous; or are depreciable with the passage of time; are subject to constraints of storage space and are so specified by the Government, the same may be disposed of, after their seizure.

38. The second category of items – that is, items other than goods, which the proper officer believes are liable for confiscation – which can be seized are 'documents or books or things'. Sub-section (2) of Section 67 of the Act makes it amply clear that such items – that is, documents or books or things – may be seized if the proper officer is of the opinion that it shall be useful or relevant to any proceedings under the Act. The words 'useful for or relevant to any proceedings under the Act' control the proper officer's power to seize such items.

39. Documents and books are also covered under the wide definition of 'goods' under Sub-section (52) of Section 2 of the Act but the same are not goods that are liable for confiscation. Seizure of such documents or books is not contemplated for the reason that they are subject matter of supplies in respect of which tax has been evaded;

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seizure of books and documents is contemplated only for the purpose that they may contain information, which may be useful or relevant for any proceeding under the Act. Hence, the purpose of providing for seizure of such items is to secure material information, which may be useful or relevant for the proceedings under the Act.

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 concerned authority 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

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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 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-section (2)

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and Sub-section (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

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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 every thing notwithstanding that the 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-section (2) and Sub-section (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 Mama: AIR 1940 Bom 378***. In the said case, the

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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 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 s. 152, sub-s. (*1*), of the Bombay Municipal

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> Boroughs Act. It was conceded in the lower Court that the case did not fall within sub-s. (*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 s. 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 s. 152, sub-s. (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 s. 3, sub-s. (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 s. 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

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valuable assets, for securing the interest of Revenue.

51. In the case of ***Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.: (1987) 1 SCC 424,*** the Supreme Court held as under:

> "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 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."

52. In ***Balram Kumawat v. Union of India & Ors.: AIR 2003 SC 3268***, the Supreme Court observed that:

> "20. Contextual reading is a well-known proposition of interpretation of statute. The clauses of a statute should be construed with reference to the context vis-a-vis the other provisions so as to make a consistent enactment of the whole, statute relating to the subject-matter. The rule of 'ex visceribus actus' should be resorted to in a situation of this nature."

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53. In the case of ***State of West Bengal v. Union of India: AIR 1963 SC 1241***, the Supreme Court held as under:

> "The court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs."

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

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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 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, corelated 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*".

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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 & Ors.*** (*supra*). In that case, the Division Bench at Indore had rejected the prayer for release of ₹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 Hon'ble 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

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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 in Heydon's case: 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.

58. It is also material to note that the show cause notice dated 10.11.2020 does not refer to any documents or material relied upon by the Revenue for proposing any such demand. According to Mr. Harpreet Singh, the said notice is not relevant as it is issued by State Authorities. He states that Central Tax Authorities have not issued any notice.

59. The aforesaid contention is unpersuasive as the demand under the said notice issued under Section 74 of the Act includes a demand of ₹6,05,225/- on account of Central Goods and Service Tax.

60. In terms of Sub-section (3) of Section 67 of the Act, the documents, books and things seized under Sub-section (2) which have not been relied upon for issuance of a notice, under the Act or Rules

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made thereunder, are required to be returned to the person from whom the such items were seized within a period not exceeding thirty days from the issuance of notice.

61. The notice dated 10.11.2020 proposes to raise a demand for the month of April, 2019 (which is prior to the date of the search). Although, Mr. Singh contended that the said notice is not a notice issued by the Central Authorities but he does not dispute that the said notice does not rely on any of the items seized during the search operations conducted on 28.01.2020. Moreover, in the counter affidavit, it is alleged that "the petitioner had filed ineligible / bogus GST Input Tax Credit on the strength of fake / goodless invoices issued by various bogus / non-existent firms". Thus, it follows that the demand of CGST/SGST raised in the notice dated 10.11.2020 issued under Section 74 of the Act would take into account the said allegation. The notice under Section 74 of the Act does not specify any particular reasons to show that "Input Tax Credit has been wrongly availed or utilized". In the circumstances, we are unable to accept that the notice dated 10.11.2020 is not the "notice" as referred to under Sub-section (3) of Section 67 of the Act.

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

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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 28.01.2020. 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.

VIBHU BAKHRU, J

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 17, 2023
'gsr'

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