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

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Judgment reserved on: 05 February, 2024

Judgment pronounced on: 13 February, 2024

+ **W.P. (C) 328/2024**

M/S K.M FOOD INFRASTRUCTURE PVT LTD THROUGH ITS
DIRECTOR MUKESH KAPOOR Petitioner

versus

THE DIRECTOR GENERAL DGGI
HEADQUARTERS, NEW DELHI & ANR. Respondents
AND

+ **W.P. (C) 363/2024**

MUKESH KAPOOR AND OTHERS Petitioners

versus

THE DIRECTOR GENERAL DGGI
HEADQUARTERS, NEW DELHI & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner: Ms. Pankhuri Shrivastava, Advocate.

For the Respondent: Mr. Harpreet Singh, Senior Standing Counsel with Ms. Suhani Mathur, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

RAVINDER DUDEJA, J.

1. Both these petitions have been filed by the petitioners, *inter alia*, praying for issuance of directions declaring resumption of currency as recorded vide Panchnama dated 04.10.2021 as illegal, arbitrary and contrary to the provisions of law and for further

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directions to the respondents to return the resumed currency to the petitioners in the following manner:-

- i) M/s. K.M. Food Infrastructure (Petitioner in W.P. (C) No. 328/3024) – Rs. 29,51,257/-;
- ii) Mr. Mukesh Kapoor (Petitioner No. 1 in W.P. (C) No. 363/2024) – Rs. 68,63,552/-;
- iii) M/s. Apparent Marketing Pvt. Ltd. (Petitioner No. 2 in W.P. (C) No. 363/2024) – Rs. 85,41,191/-;
- iv) Ms. Saroj Kapoor (Petitioner No. 3 in W.P. (C) No. 363/2024) – Rs. 7,10,000/-.

FACTUAL BACKGROUND

2. The undisputed facts are that a search was carried out by the Officers of the respondents on 04.10.2021 at the business premises belonging to Mr. Mukesh Kapoor, who is Director of M/s. K.M. Food Infrastructure Pvt. Ltd. and M/s. Apparent Marketing Pvt. Ltd., in terms of “Authorization for Search” dated 03.10.2021. During the course of search, various documents/records viz. balance sheets, bilty books, purchase invoices, e-way bills, GST sales ledger etc., belonging to said companies were resumed vide Panchnama dated 04.10.2021.

3. Vide another “Authorization for Search” dated 03.10.2021, the Officers of respondents took search of the premises viz. C-3, Court Lane, Civil Lines, Delhi-110054, belonging to Mukesh Kapoor. As the said premises was under renovation, nothing incriminating was found.

4. Thereafter, the officers of the respondents conducted search of

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another premises viz. C-5, Court Lane, Civil Lines, Delhi-110054, from where, they resumed various records/documents, such as purchase/invoices, bank accounts details, sale invoices, directorship details etc. as also electronic devices viz. mobile phones of the Director of the aforesaid companies. They also resumed Indian Currency totalling to Rs. 1,90,66,000/- from the said premises vide Panchnama dated 04.10.2021.

5. Petitioner sent an e-mail dated 05.12.2021 to the Senior Intelligence Officer, DGGI, stating that cash found during the search at Mukesh Kapoor's residence, belongs to Mukesh Kapoor, K.M. Foods Infrastructure Pvt. Ltd. & Apparent Marketing Pvt. Ltd., as per following details:-

S. No	Particulars	Cash in Hand
1)	K M Foods Infrastructure Pvt. Ltd.	29,51,257/-
2)	Apparent Marketing Pvt. Ltd.	85,41,191/-
3)	Mukesh Kapoor	68,63,552/-
4)	Saroj Kapoor	7,10,000/-
	Total	1,90,66,000/-

6. The Officers of the respondents on 01.12.2023, returned the documents and mobile phones seized during the search conducted on 04.10.2021. However, the currency seized was not returned to the petitioners.

7. Respondent No. 1 filed a short reply, stating therein that the cash amount of Rs. 1,90,66,000/- was seized from the residential premises of Mr. Mukesh Kapoor vide Panchnama dated 04.10.2021,

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as he could not provide any satisfactory reply for the possession of the said amount. It has also been stated that the said amount was deposited in the bank and converted into fixed deposit with Auto Renewal Option.

8. It has also been stated in the reply that during the course of investigation no evidence could be unearthed that the cash so seized was representing the sale proceeds of unaccounted goods. However, a letter dated 23.10.2023 has been written to the Income Tax Authorities to take over the custody of fixed deposit of Rs. 1,90,66,000/- with request to take requisite action as deemed fit under the Income Tax provisions.

SUBMISSIONS

9. Learned counsel for the petitioners has submitted that the entire amount resumed was duly accounted in the books of accounts of the petitioners, however, without verifying the said facts, the currency was resumed illegally by the Officers of the respondents. Learned counsel for the petitioners contended that the CGST Officers had no power to seize the cash in exercise of its powers under Section 67 (2) of the “Central Goods & Services Tax Act, 2017” (CGST Act). It is argued that powers under Section 67 (2) of the CGST Act to seize the goods can be exercised only if the goods are liable for confiscation.

10. It is also argued that the currency is excluded from the definition of goods and thus cannot be seized as goods. It is further submitted that currency is not useful or relevant for conducting any proceedings and therefore the same cannot be seized in the exercise of



powers under Section 67 (2) of the CGST Act.

11. Learned Senior Standing Counsel appearing for the respondents has argued that petitioner Mukesh Kapoor could not offer any valid explanation of the source of the cash and therefore the Officers of respondents were under bona fide belief that the cash was the result of clandestine and illegal activities of the petitioners contrary to the provisions of CGST Act 2017 and this is why, the seizure was effected.

12. Learned counsel for the respondents has placed reliance on the judgment passed by the Hon'ble M.P. High Court in the case of **Kanishka Matta Vs. UOI W.P. (C) No. 8204/2020, decided on 26.08.2020**, wherein, the Hon'ble High Court interpreted the word "things" appearing in Section 67 (2) of the CGST Act, 2017 to include the money.

ANALYSIS & CONCLUSION

13. Having considered the submissions of the learned counsels for the respective parties, at the outset, it would be appropriate to reproduce the provisions of Section 67 (2) of the CGST Act, which reads as under:-

"SECTION 67 OF CGST ACT 2017

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 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 sub-section (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 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 (2 of 1974), 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.

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(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.

(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.”

14. It is clear from the reading of the above Section that a proper Officer, not below the rank of Joint Commissioner, is empowered to authorize any person 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 under Sub section (1) of Section 67 of the Act. Such inspection can be authorized only if the proper Officer has the reasons to believe that the taxable person (i) has either suppressed any transaction relating to the supply of goods or services or both or suppressed the stock of the goods in hand, or has claimed Input Tax Credit in excess of his entitlement or has otherwise contravened any provision of the Act or the Rules made thereunder to evade payment of tax. 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 and this provision is not meant for recovery of

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tax or for securing the same.

15. Sub Section (2) of Section 67 of the Act specifies the power to seize the goods. 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 would be useful and 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. The Second Proviso to sub Section (2) of 67 of the Act clarifies that insofar as the seized documents or goods or things are 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.

16. Sub Section (7) of Section 67 of the Act specifies that where the 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 the seizure of the goods, the goods are required to be returned to the person from whom the same were seized. This period of six months can be extended by a further period not exceeding six months on sufficient cause being shown under proviso to Section 67 (7) of the Act.

17. The issue for determination is whether the Officers of the respondents had any power to seize the cash under Section 67 of the Act.

18. 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;”

19. Thus, cash 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.

20. In the case of Kanishka Matta (supra), Indore Bench of Madhya Pradesh High Court rejected the prayer for the release of cash that was seized from the premises of the petitioner. The Court held that the word “thing” in Section 67 (2) would include money.

21. In the case of **Shabu George Vs. State Tax Officer (IB), State GST Department, Aluva (2023) 9 Centax 28 (Ker.)**, again the question was whether the word “thing” in the GST Act would include cash, the Division Bench of the Kerala High Court after considering the decision of Madhya Pradesh High Court held in favour of the assessee holding that the power of any authority to seize any “thing” while functioning under the provisions of a taxing statute must be guided and informed in its exercise by the object of the statute concerned. The relevant extract of the judgment is reproduced hereunder:-

“While it may be a fact that Section 67 (2) of the CGST Act authorizes the seizure of things, including cash in appropriate cases, we do not think that the present is a case that called for a seizure of the cash found in the premises of the appellants at the time of the search. The power of any authority to seize any ‘thing’ while functioning under the provisions of a taxing statute must be guided and informed in its exercise by the object of the statute concerned. In an investigation aimed at detecting tax

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evasion under the GST Act, we fail to see how cash can be seized especially when it is the admitted case that the cash did not form part of the stock in trade of the appellant's business. It is evident from the order of the Intelligence Officer that the cash that was seized from the premises of the appellants was not the stock in trade of the quarry business that was conducted by the appellant. The findings of the Intelligence Officer that 'it is suspicious that this much amount of money kept in the house of M/s. Shabu as idle and not deposited at bank' and further 'the amount received as gift on the day of marriage has not been recorded in his income tax return and from this it is evident that the money is from illicit sources' reveal the extent to which authorities under the Act are misinformed of their powers and the limits of their jurisdiction. The aforesaid findings of the Intelligence Officer could perhaps have been justified had he been an officer attached to the Income Tax department. In the context of the GST Act, the findings are wholly irrelevant. We find that the seizure of cash from the premises of the appellants was wholly uncalled for and unwarranted."

22. The aforesaid decision of the Kerala High Court received the stamp and approval of the Hon'ble Supreme Court, inasmuch as, the Special Leave Petition was dismissed.

23. The interpretation given by the Madhya Pradesh High Court did not find favour with the Co-ordinate Bench of this Court in the case of **Deepak Khandelwal Vs. Commissioner of CGST Delhi West (2023) 9 Centax 244 (Delhi)**. While applying the principle of propulsive interpretation, the Court held that the power under Section 67 of the Act cannot be read to extend to enable the seizure of assets on the ground that the same are not accounted for. The relevant extract of the judgment is reproduced below:-

46. It is clear from the Scheme of Section 67 of the Act that the word 'things' is required to be read, ejusdem generis, with the preceding words 'documents' and 'books'. It is apparent that



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

47. We are unable to accept that the word ‘things’ must be read expansively to include any and 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.”

24. We are in respectful agreement with the view taken by the Co-

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ordinate Bench that the word “things” appearing in Section 67 of the CGST Act, 2017 does not include “money”, and therefore, that being so, action on the part of the Officers of the respondents seizing/resuming the cash was illegal and arbitrary.

25. Investigation has revealed that there is no evidence that the cash so seized was representing the sale proceeds of unaccounted goods, therefore, it could not have been seized under the provisions of CGST Act as the seizure is limited to the goods liable for confiscation. Therefore, there is no reason for the retention of the cash amount by the respondents.

26. Even otherwise, in the facts of this case what is evident is that cash was seized/resumed vide Panchnama dated 04.10.2021 and in accordance with sub section (7) of Section 67 thereof, when no notice in respect thereof is given within six months of seizure of the goods, the goods shall be returned to the person from whose possession they were seized. On this ground also, petitioners are entitled for the return of resumed cash.

27. As per short reply filed on behalf of respondent No. 1, cash amounting to Rs. 1,90,66,000/- was seized under Panchnama dated 04.10.2021. Learned Senior Standing Counsel for the respondents, however, submits that the Officers had merely “resumed” the cash as is noted in the Panchnama, and therefore, the same cannot be considered as seizure.

28. Undisputedly, petitioners had not handed over the cash to the concerned Officers voluntarily. The action taken by the Officers was

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therefore a coercive action. CGST Act does not support such an action of forcibly taking over the possession of the currency from the premises of any person.

29. Even though, as per respondents, a letter has been written to the Income Tax Authorities on 23.10.2023 to take custody of the fixed deposit of Rs. 1,90,66,000/- with request to take action under the Income Tax provisions, it is conceded by the learned counsel for the respondent that till date, there is no requisition under Section 132 (A) of the Income Tax Act.

30. Hence, in view of the above, we do not find any justification for the resumption of the cash and its continued retention by the respondents. Petitions are therefore allowed with directions to the respondents to forthwith remit the proceeds of the fixed deposit (along with interest) to the bank account of the entities/person from whose possession the same was resumed during search conducted on 04.10.2021. It is however clarified that the respondents are not precluded from taking action or instituting any other proceedings under the Act in accordance with the law.

RAVINDER DUDEJA, J

SANJEEV SACHDEVA, J

FEBRUARY 13, 2024

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