

Arvind Goyal Ca vs Union Of India & Ors on 19 January, 2023

Author: Vibhu Bakhru

Bench: Vibhu Bakhru

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 12499/2021
ARVIND GOYAL CA

Through:

..... Petitioner

Mr J.K. Mittal, Ms
Vandana Mittal,
Aashna Suri and Mr Vasu
P. Jain, Advocates along
with petitioners (Deepa
Goel and Mr Arvind
Goyal) in person.

Versus

UNION OF INDIA & ORS.

Through:

..... Respondents

Ms Nidhi Banga, Senior
Panel Counsel with Mr
Nishant Kumar, Advocate
for R-1/UOI.
Mr Harpreet Singh, Senior
Standing Counsel with Mr
Suhani Mathur, Mr Jatinder
Kumar Gaur and Mr
Akshay Saxena
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% 19.01.2023

1. The petitioners have filed the present petition, inter alia, praying as under:

"(a) direct the Respondents to deposit balance sum of Rs.1,04,00,000/- taken away on 04.12.2020 during search, from the Petitioner No.2 premises and possession, and be kept in the interest-bearing fixed deposit in the name of Registrar General of this Hon'ble Court during the pendency of present writ petition."

2. The undisputed facts are that a search operation was conducted at the residence of the petitioners on 04.12.2020, by certain officers of GST, AE, Delhi, West under Section 67(2) of the Goods and

Services Tax Act, 2017 (hereafter 'the GST Act'). During the course of the search, the officers found cash aggregating to 1,22,87,000/- and took possession of the said cash. Admittedly, no seizure memo was drawn in respect of the said cash. However, a panchnama was drawn up, which indicates that the concerned officers took possession of certain items including cash aggregating to 18,87,000/- from the room of petitioner no.1 and cash amounting to 1,04,00,000/- from the room of petitioner no.2. The said officers also took possession of mobile phones as well as a laptop belonging to petitioner no.1.

3. The petitioner has challenged the said search operation as unlawful on several grounds. It is contended by the petitioner that the concerned officers could have no reason to believe that any goods liable for confiscation were lying in the premises of the petitioners. It is also claimed that the concerned officers had no reason to believe that any records relevant to the proceedings would be available in the premises.

4. The petitioner also challenges the action of the concerned officers of taking possession of cash as without authority of law.

5. The respondents have filed the counter affidavit stating that a letter dated 04.12.2020 was received by CGST Delhi East Commissionerate Office from CGST Bhopal Commissionerate and the said search operations were pursuant to the said letter.

6. The Bhopal Commissionerate had informed CGST Delhi a concern named M/s Samriddhi Enterprises, holding GSTIN 23BSOPP9752K1ZY, which belongs to one Sh. Rakesh Pal and was located at Shop No.2, Kolar Road, Bhopal. He was ostensibly engaged in the trading of betel nuts, but the enquiry revealed that such trading was without actual movement of goods. It was also revealed that there was a saree shop at the said premises operating under the name of 'Taksh Sarees'. And, no concern with the name Samriddhi Enterprises was operating from the said address.

7. Apparently, Sh. Rakesh Pal had made a statement that the said concern was opened by petitioner no.1. He also named a few other persons.

8. Admittedly, the petitioners are not assesseees from whom any tax or amount is to be recovered.

9. The laptop and mobile phones, which were taken away by the concerned officers, were subsequently returned to petitioner no.1. However, the cash collected by the officers was deposited in a fixed deposit receipt in the name of the President of India.

10. In the aforesaid context, the petitioner contends that the GST officers had no power to seize any cash in exercise of its powers under Section 67(2) of the GST Act.

11. It is contended that the power under Section 67(2) of the GST Act to seize goods could be exercised only if the goods were liable for confiscation. The documents, books or things, could be seized only if the same are useful or relevant to any proceedings under the GST Act.

12. It is contended on behalf of the petitioners that currency is goods. The currency is also not useful or relevant for conducting any proceedings and therefore, there is no question of seizing currency in exercise of section 67(2) of the GST Act.

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

14. However, there is no occasion for this Court to now examine the aforesaid question as it is the respondents' stand that the cash was not seized. It is contended that the seizure memo was not prepared as the officers, who had conducted the search operation, had, in fact, not seized any cash.

15. Mr. Harpreet Singh, learned counsel for the respondents, submits that the officers had merely "resumed" cash as is noted in the panchnama and therefore, the same cannot be considered as seizure.

16. However, Mr Harpreet Singh is unable to point out any provision in the GST Act that entitles any officer of GST to merely cash to the concerned officers voluntarily. Undisputedly, the action taken by the officers was a coercive action. We find no provision in the GST Act that could support an action of forcibly taking over possession of currency from the premises of any person, without effecting the same. The powers of search and seizure are draconian powers and must be exercised strictly in terms of the statute and only if the necessary conditions are satisfied.

17. In the present case, the GST officers have dispossessed the petitioners of the currency found in their premises during search operations conducted under Section 67(2) of the GST Act but have not seized the currency under the said provision. Plainly, their action in doing so is without authority of law.

18. The petitioners had also placed on record certain Whatsapp chats between the concerned officers and petitioner no.1, which indicates that the petitioners and the officers were in touch over a period of time. It also appears from the said messages that one of the officers had met the petitioners on more than one occasion. The messages for fixing the time and venue for the meeting are rather cryptic. Petitioner no.1 is also present in Court and he states that he was called by the concerned officer to meet in a park.

19. In the given facts, before proceeding further, this Court considers it apposite to give notice to the concerned officers, Mr. Vinod Prakash Sharma, Superintendent and Mr. Sandeep Dhama, and to hear them before making any adverse comments.

20. Insofar as the action of the officers of dispossessing the petitioners of their currency is concerned; it is clear that the said authority of law. The amount of 18,87,000/- has already been returned to petitioner no.1. The respondents are directed to forthwith return the balance amount along with the interest accrued thereon to the petitioners. The bank guarantee furnished by petitioner no.1 for release of currency is directed to be released forthwith.

21. Mr. Vinod Prakash Sharma, Superintendent and Mr. Sandeep Dhama are directed to be present in Court on the next date of hearing for further proceedings.

22. List on 20.02.2023.

VIBHU BAKHRU, J AMIT MAHAJAN, J JANUARY 19, 2023 RK