

Blue Evolution Trading Pvt. Ltd vs Commissioner, Central Excise And ... on 21 October, 2024

Author: Yashwant Varma

Bench: Yashwant Varma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 12267/2023

BLUE EVOLUTION TRADING PVT. LTD.

Through:

versus

COMMISSIONER, CENTRAL EXCISE AND CENTRAL
GST COMMISSIONERATE DELHI SOUTH & ANR.

.....Respon

Through: Mr. R. Ramachandran, Sr.

Standing Counsel.

Ms. Pratima N. Lakra, CGSC

with Mr. Chandan Prajapati,

Adv. for UOI.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% 21.10.2024 W.P.(C) 12267/2023, CM APPLs. 48250-51/2023

1. The present writ petition has been preferred seeking the following reliefs:-

"a. Issue of an appropriate writ, order or direction in the nature of certiorari, thereby quashing the Pre Show cause notice 07.06.2023, Show Cause Notice dated 25.07.2023 (Received on 09.08.2023) and the consequent investigation as ensued by the Respondent Department u/s 74 of the GST Act, 2017 against the Petitioner as being arbitrary and violative of Articles 14 and 19 of the Constitution.

b. Pass any such further order(s) as the Hon ble Court deems fit and necessary in the interest of justice."

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2. The challenge principally is to the Show Cause Notices¹ dated 07 June 2023 and 25 July 2023. In terms of those notices, the respondents have proposed taking the following actions and have called upon the petitioner to furnish a response:-

"23. Now, M/s Blue Evolution Trading Pvt. Ltd., S-357, Panchsheel Park, New Delhi-110016, are hereby called upon to show cause to the Deputy Commissioner CGST and Central Excise, Delhi South Commissionerate having office at 2nd Floor, ELL Annexe Building, Bhikaji Cama Place, New Delhi-110066, within 30 days of receipt of this Show Cause Notice as to why:-

(i) Inadmissible input tax credit of Rs.1,38,93,120/- (Rupees One Crore Thirty Eight Lakhs Ninety Three thousand One hundred and Twenty only) availed and utilized by the taxpayer on the basis of good s-less invoices (without accompanying the goods) issued by non-existent suppliers should not be demanded & recovered from them under Section 74(1) of the CGST Act, 2017 read with relevant provisions of SGST/UTGST/IGST Act, 2017 alongwith applicable interest under Section 50 of the CGST Act, 2017 read with relevant provisions of SGST/UTGST/IGST Act, 2017;

(ii) Penalty equivalent to the tax specified in (i) above be not imposed upon them under Section 74 (1) read with Section 122(1)

(ii) (iv) (vii) (x), (xvi) of the CGST Act, 2017 read with relevant provisions of SGST/UTGST/IGST Act, 2017;

(iii) Penalty should not be imposed on Shri Avijeet Saluja, the person managing the affairs of M/s. Blue Evolution Trading Pvt.

Ltd., under Section 122 (1A) of the CGST Act, 2017 read with relevant provisions of SGST/UTGST/IGST Act, 2017;

(iv) Penalty should not be imposed on Smt. Lupita Saluja who has retained the benefits of such transactions and is also one more the person behind the fraudulent transactions of M/s. Blue evolution Trading Pvt. Ltd. under Section 122 (1A) of the CGST Act, 2017 read with relevant provisions of SGST/UTGST/IGST Act, 2017 ;

(v) The amount seized of Rs.6 lakhs in the premises of M/s. Blue Evolution Trading Pvt. Ltd. has already been proposed to be appropriated against the demand due in SCN No 43/2022-23, 44/2022-23 and 45/2022-23 which has been issued vide Fl. No. DL/CGST/South/AE/Gr-4/SunFlame/771/2020-21dated 16.08.2022, hence the same is not being mentioned in this show SCNs This is a digitally signed order.

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3. The validity of these notices appears to have been questioned by the petitioner basis an order of refund dated 04 September 2023 which was drawn by the State Goods and Services Tax² authorities and stands placed as Annexure-14 to our record. It appears to have been contended by and on behalf of the writ petitioner that since the allegations on which the SCNs are founded were duly examined by the State GST authorities prior to the framing of the order of refund, the notices are rendered wholly unsustainable.

4. It is these issues which appear to have been framed for consideration by the Court in its order of 18 September 2023 and which is reproduced hereinbelow:-

"1. The petitioner has filed the present petition impugning a show cause notice dated 25.07.2023 (hereafter „the impugned show cause notice) and the proceedings pursuant thereto. In terms of the impugned show cause notice, the petitioner was called upon to pay a sum of ₹ 1,42,24,323/- in respect of the Input Tax Credit (ITC) availed by the petitioner for the discharge of the Integrated Goods and Services Tax (IGST) in respect of certain exports. The petitioner had, after payment of the IGST, applied for a refund relating to the tax period, October, 2020.

2. It is the petitioner's case that in the proceedings relating to the refund of the IGST, the petitioner was called upon to respond to the allegations that the vendor, from whom the petitioner had purchased the goods, had availed ITC fraudulently; the invoices raised were without supply of goods; and the invoices raised were fake. It is the petitioner's case that it had paid the vendor in full along with the tax. It is also established that the petitioner as well as the vendor from whom the petitioner had purchased the goods, had filed their returns duly disclosing the payment of taxes. After considering the said issue, the proper officer had allowed the petitioner's claim for refund of the IGST on the goods exported by the petitioner.

3. It is the petitioner's grievance that despite the issue being considered by the proper officer in the earlier proceedings, the GST This is a digitally signed order.

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4. Issue notice.

5. Mr. Harpreet Singh, learned counsel appearing for the respondents accepts notice and seeks time to file a counter- affidavit.

6. Let the same be filed within a period of two weeks from date. Rejoinder, if any, be filed before the next date of hearing.

7. In the meanwhile, the petitioner shall file a reply to the impugned show cause notice within a period of two weeks from date, however, further proceedings in relation to the impugned show cause notice are stayed till the next date of hearing."

5. It would be appropriate at this stage to briefly notice the contents of the impugned SCNs and which principally laid the following allegations against the writ petitioner. It would appear that the respondents had undertaken an investigation with respect to the supplies received from M/s Crown Golden Enterprises by the writ petitioner. Based on that investigation, the following allegations are made:-

"8. Based on the investigation conducted it was also observed that the major part of the supply by the notice was from M/s Crown Golden Enterprises, Space No. 307, ATC Jaina Tower-II, Plot No. 6, District Centre, Janakpuri, New Delhi-110058 and the intelligence suggested that the said supply was on goods-less invoices.

xxxx xxxx xxxx 10.4 Further, given that the investigation indicated that a huge amount of supplies had been received from M/s Crown Golden enterprises, space No 307, ATC Jaina Tower, Plot No 6, District centre Janak puri, New Delhi 110058. Summons dated 24.01.2023 [RUD-14] were issued under Section 70 of the Act, to M/s Ambawata Transport service prop, Sh. Bhopal Singh owner of Vehicle number DL01LAD6281 to tender statement before the Superintendent CGST, Delhi South. Sh. Bhopal Singh appeared before the Superintendent of CGST Delhi South and tendered his statement on 30.01.2023. In this Statement dated 30.01.2023 [RUD-15], on being asked about M/s Crown Golden Enterprise he This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 17/11/2024 at 15:24:29 stated that he does not know any such firm with the name of M/s Blue Evolution Trading Private Limited and he never done any work w.r.t M/s Crown Golden enterprises.

xxxx xxxx xxxx 10.6 Similarly, given that the investigations indicated that a huge amount of supplies had been received from M/s Crown Golden enterprises, space No 307, ATC jaina Tower, Plot No 6, District centre Janak puri, New Delhi 110058. Summons dated 17.03.2023 [RUD-18] were issued under Section 70 of the Act, to Sh. Rakesh Kumar owner of Vehicle number DL1LAD3044 to tender statement before the Superintendent of CGST Delhi South and tendered his statement on 17.04.2023. In his Statement dated 17.04.2023 [RUD-19], on being asked about M/s Crown Golden Enterprise he stated that he does not know any such firm with the name of M/s Blue Evolution Trading Private Limited and he never done any work w.r.t M/s Crown Golden enterprises.

xxxx xxxx xxxx 14.1 Supplier's credentials: Major suppliers of the noticee namely M/s Crown Golden enterprises has been found to be non-existent which leads to the conclusion that the supplier exists only on paper and they are fake entities/shell companies which were created for the sole purpose to pass on the input tax credit to the noticee;

14.2 During the scrutiny of the bank statement provided by the bank, mainly transaction details/payments made with M/s Crown Golden enterprises were verified with the party wise ledger and bank statement which were submitted during the statement made on 28.11.2022 but the nature of the transactions entered with M/s Crown Golden enterprises could not be cross verified given that the party was found non-existent at the address declared with the GST Department nor has the supplier party namely M/s Crown Golden enterprises joined the investigation which show that the supplier exists only on paper and they are fake entities/shell companies which were created for the sole purpose to pass on the input tax credit to the noticee.

14.3 The notice, has therefore, failed to prove that proper payments have actually been made to its suppliers. Such being the case, the noticee is not entitled to avail ITC on account of violation of second proviso to section 16(2) of CGST Act that states that "provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one This is a digitally signed order.

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14.4 Based on the investigations it appears that ITC has been availed and utilized by the noticee in respect of the inward supplies received from the fake firms in contravention of law. In particular, the notice fails to fulfil the condition stipulated under section 16(2)(b) of the CGST Act, 2017 which requires that the recipient must have received the goods or services or both in order to avail ITC. When major supplier is bogus non-existent entities, the notice can not be said to have received goods from such suppliers. As such the noticee appears to have availed ineligible ITC of Rs.1,38,93,120/- through fraud.

15 Transporter's credentials and e-way verification:

The finding regarding non-receipt of goods by the noticee has been further substantiated by the recorded statements of the vehicle owners and transporters, the details of which were obtained from the e-way bills. These transporters in their

respective statements, have either denied having any knowledge of the noticee's firm or have categorically mentioned that they did not transport the noticee's goods. It may be noted that e-way bill details reflect the actual movement of goods wherein the details like vehicle number, transporter's name, origin and destination of goods are captured. In an attempt to camouflage fake invoices as genuine transactions, false details have been furnished in the e-way bills by the noticee. With the suppliers being found non-existent and the transporters denying having any knowledge about the movement of goods, gives further credence to the finding that the goods were never really received by the noticee. As such, the noticee has availed and utilized ITC to the tune of Rs.1,38,93,120/- with respect to non-existent firm is in violation of Section 16(2) of CGST Act, 2017.

xxxx xxxx xxxx 16.1 Based on the above it appears that Sh. Avijeet Saluja, the person managing the affairs of the company, in his statement dated 28.11.2022 stated that the company is promoted by him and the share of 100% is split between him and his wife. On being asked whether he knew about the whereabouts of his major supplier i.e M/s Crown Golden enterprises, he stated that he does not know whereabouts of the prop of M/s Crown Golden enterprises, i.e. Sh.

Brijnath Ram. In his statement dated 28.11.2022 he has stated that he entered into contracts with every supplier and buyers and all agreement were signed in his office at the time of placing of order. Further on being asked about the nature of correspondence, he This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 17/11/2024 at 15:24:29 stated that all the contracts were on face to face basis and on being asked about the telephone no. of the supplier he stated that he only remembers the suppliers name and does not remember contact no. of supplier. This submission that there is no contact with the major supplier regarding various aspects of the business such as quantity, quality, delivery of products etc. appears to be absurd. Given the need to contact each other the purpose of delivery and payment and by any standards of drafting agreements the basic details include details of the contact number and mail id's of both parties is a basic requirement. The person managing the affairs of a company with such huge turnover being unaware about its supplier credentials more so when the supply received from M/s Crown Golden enterprises is more than 90% of its total input credit raises serious doubts regarding the genuineness of the company's affairs.

xxxx xxxx xxxx 19.1 In view of the above discussion, it is apparent that the noticee has not received the any goods along with the tax invoice/e-way bill. They have received the paper invoices only without actual receipt of the goods. They have fraudulently availed ITC on the basis of such goods-less invoices and after export of the some substandard goods procured illegally without invoices, have filed for refund of IGST paid by them, which was never admissible to them. The notice Sh. Avijeet Saluja have suppressed the material facts from the Department during investigation it was found that its major supplier are non-existent and by doing so they had availed and utilized the ITC fraudulently i.e., without existence of the supplier in order to claim refund in

the guise of integrated tax/CGST/SGST out of the inadmissible input tax credit availed. By these acts of omission and commission, the noticee has contravened the provisions of Section 16, 37, 39, 54, 59 & 155 of CGST Act; 2017 read with the parallel Sections of SGST Act/UTGST Act, 2017 and Section 20 of the IGST Act, 2017. Had the investigations were not initiated by the Anti-Evasion Branch of CGST Delhi South, these facts of irregular availment and utilization of input tax credit would not have come to the notice of the Department. Hence, the said inadmissible ITC amount of Rs.1,38,93,120/- is liable to be demanded and recovered under the provision of Section 74 (1) of CGST Act 2017 alongwith interest under Section 50 of the Act *ibid*."

6. It appears that during the pendency of the investigation and the proceedings which had been initiated, including the investigation referred to above, the petitioner made an application on 14 April 2023 before the office of the Special Commissioner (Zone-IX), Department This is a digitally signed order.

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7. It, however, is apparent from an *ex facie* reading of that order that the allegations which formed the subject matter of the impugned SCNs were neither examined nor considered. The order of refund dated 04 September 2023 proceeds merely on the submissions and contentions which were addressed before that authority by the writ petitioners. In view of the aforesaid and bearing in mind the nature of allegations which are levelled, we find ourselves unconvinced to hold that the order of refund would preclude or prevent the respondents from examining the allegations which form the subject matter of the impugned SCNs.

8. We also in this regard bear in mind the disclosures which have been made by the respondents in their counter affidavit. It is brought to our attention that the Additional Commissioner (Export) ICD TKD Commissionerate at Tughlakabad, New Delhi from where the exports took place, had been duly apprised of the ongoing investigation. The refund application, however, was made before the State GST authority, and which had perhaps no occasion to examine or evaluate the material which had been gathered in the course of the investigation alluded to above.

9. In our considered opinion, the mere fact that the duty drawback benefits were released or that the completion of exports was duly verifiable from the ICEGATE portal would clearly not be determinative of an allegation of inadmissible Input Tax Credit having been availed. We, consequently, find no justification to interdict the SCN proceedings.

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10. The writ petition consequently fails and shall stand dismissed. This order however shall be without prejudice to the rights and contentions of respective parties and which are kept open. CM APPL. 5405/2024 (Direction)

11. This application has been preferred seeking the following reliefs:-

"a. Grant a relief by directing Respondent to release the cash amount of INR 16,00,000.00 (Indian Rupees Sixteen Lakhs Only) along with the interest, seized during the raid conducted on 17.11.2020 at N-113, Panchsheel Park, New Delhi-110016 and on 24.11.2020 at S-357, Ground Floor, Panchsheel Park, New Delhi- 110017;

b. Pass any other such directions/orders and cost as this Hon ble Court deems fit and proper in the facts and circumstances of the present petition."

12. Undisputedly, the seizure of cash would not sustain bearing in mind the following principles which came to be laid down in our decision in Deepak Khandelwal Proprietor M/s Shri Shyam Metal v. Commissioner of CGST, Delhi West and Anr3:-

"40. It is clear from the schematic reading of Section 67 as well as other provisions of the Act that the purpose of Section 67 of the Act is not recovery of tax; it is not a machinery provision for enforcing a liability. The purpose of Section 67 of the Act is to empower authorities to unearth tax evasion and ensure that taxable supplies are brought to tax. In respect of goods and supplies, which are subject-matter of evasion, the proper officer has the power to seize the goods to ensure that taxes are paid. Once the department is secured in this regard either by discharge of such liability or by such security or bond as the authority concerned deems fit the goods are required to be released in terms of sub-section (6) of Section 67 of the Act.

41. The second limb of Section 67(2) of the Act permits seizure of documents or books or things so as to aid in the proceedings that may be instituted under the Act. The documents or books or things cannot be confiscated and have to be returned. This is amply clear from the plain language of the second proviso to sub-section (2) of 2023 SCC OnLine Del 4985 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 17/11/2024 at 15:24:30 Section 67 of the Act. In terms of the second proviso to sub-section (2) of Section 67, the documents or books or things seized are required to be retained only for so long as it may be necessary "for their examination and for any inquiry or proceedings under the Act".

Once the said purpose is served, the books or documents or things seized under sub-section (2) cannot be restrained and are required to be released.

42. The second proviso, although couched as a proviso, is an integral part of sub-section (2) of Section 67 of the Act. The same clearly reflects that the legislative intent of empowering seizure of documents or books or things is for enabling their use in aid of the proceedings under the Act. Thus, seizure of such documents or books or things is conditional upon the proper officer's opinion. That the same are "useful for or relevant to" such proceedings.

43. Sub-section (3) of Section 67 of the Act, consistent with the legislative intent of permitting seizure of books or documents or things, provides that if the documents or books or things seized under sub-section (2) are not relied upon for issue of a notice under the Act or rules made thereunder, the same shall be returned within a period of thirty days. Although, there is no ambiguity in the language of sub-section (2) of Section 67 of the Act that seizure of books or documents or things is permissible only if the same are considered useful for or relevant to the proceedings under the Act; sub-section (3) of Section 67 makes it amply clear that the purpose of seizure of books or documents or things is only for the purpose of reliance in the proceedings under the Act. It, thus, posits that if the documents or books or things are not relied upon in any notice that is issued, the same are liable to be returned.

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

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

46. It is clear from the scheme of Section 67 of the Act that the word "things" is required to be read, ejusdem generis, with the preceding words "documents" and "books". It is apparent that the legislative intent of using a wide term such as "things" is to include all material that may be informative or contain information, which may be useful. This is a digitally signed order.

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material which may be useful for or relevant to proceedings under the Act.

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

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

"(1) Whoever in any area after it has become a municipal district, or borough--

(a) shall have built or set up, or shall build or set up, any This is a digitally signed order.

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(b) shall deposit or cause to be placed or deposited any box, bale, package or merchandise or any other thing, in any public place or street ... shall be punished...."

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

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

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

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

51. In *RBI v. Peerless General Finance & Investment Co. Ltd.* [*RBI v. Peerless General Finance & Investment Co. Ltd.*, (1987) 1 SCC 424 : (1987) 61 Comp Cas 663], the Supreme Court held as under: (SCC p. 450, para 33) "33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when the object and purpose of its enactment is known. With this knowledge, the statute must be read first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such

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

XXXX XXXX XXXX

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

55. The Revenue has averred in its counter-affidavit that cash and silver bars in question were seized because "the petitioner could not produce any evidence of purchase of the silver bars or account for the cash found in his possession, the same were not liable to be seized under sub-section (2) of Section 67 of the Act. The power of the proper officer to seize books or documents or things does not extend to seizing valuable assets for the reasons that they are unaccounted for or may be liable to confiscation under any other statute. Concededly, there is no material to indicate that the particular silver bars or cash were received by the petitioner in specie against any particular fake invoice.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 17/11/2024 at 15:24:30 produce any lawful evidence of its purchase/possession and they appeared to be sale proceeds from the goodless/fake invoices being transacted by the petitioner". The search and seizure operations under Section 67 of the Act are not for the purpose of seizing unaccounted income or assets or ensuring that the same are taxed. The said field is covered by the Income Tax Act, 1961. Thus, even if it is assumed that the petitioner could not produce any evidence of purchase of the silver bars or account for the cash found in his possession, the same were not liable to be seized under sub-section (2) of Section 67 of the Act. The power of the proper officer to seize books or documents or things does not extend to seizing valuable assets for the reasons that they are unaccounted for or may be liable to confiscation under any other statute. Concededly, there is no material to indicate that the particular silver bars or cash were received by the petitioner in specie against any particular fake invoice.

56. There may be cases where the Revenue finds that a particular currency note or any particular asset has evidentiary value to establish the Revenue's case. Illustratively, a delinquent dealer supplies goods without invoices only on presentation of a currency note that bears a particular number. The presentation of the currency note is used as a means of authenticating the identity of the purchaser. The number of the particular currency note is recorded in diary maintained by the purchaser. The Revenue Officer ascertains this modus operandi of evasion of taxes. The currency note, correlated with the diary, would be relevant in establishing evasion of tax in respect of certain goods. Undoubtedly, in such cases, the currency note is material that yields information as to the modus adopted for evading tax; the proper officer may seize the currency note for its evidentiary value and relevance in establishing evasion of tax in proceedings under the Act. The same may be relied upon in the proceedings that may ensue. The particular currency note in such a case would yield certain information when read in conjunction with the diary. It is material to note that such

currency note can be retained for so long as may be necessary for its "examination and for any enquiry or proceedings under the Act". Cash or other assets, which are not required in species in aid of any proceedings, but represent unaccounted wealth, cannot be seized under Section 67 of the Act. This Court had pointedly asked Mr Harpreet Singh whether there was any material showing information that the currency or the silver bars that were seized could be traced in species to any transaction which the Revenue required to establish in any proceedings. However, the answer to the same was in the negative. It is, thus, clear that the silver bars and the cash were seized only on the ground that it was "unaccounted wealth" and not as any material which was to be relied upon in any proceedings under the Act.

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57. Mr Harpreet Singh has placed reliance on the decision of the Madhya Pradesh High Court in *Kanishka Matta v. Union of India* [*Kanishka Matta v. Union of India*, (2021) 89 GSTR 56 : 2020 SCC OnLine MP 4564] . In that case, the Division Bench at Indore had rejected the prayer for release of Rs 66,43,130 that were seized from the premises of the petitioner. The court held that the word "things" as appearing in sub-section (2) of Section 67 of the Act is required to be given wide meaning as per Black's Law Dictionary. The court also referred to Wharton's Law and had noted that the word "thing" is defined to include "money". In addition, the court had also referred to a decision of the Supreme Court referring to the Heydon's rule, and concluded that money was included in the word "things". With much respect to the Court and its opinion, we are unable to persuade ourselves to adopt the said view. As noted above, the power of search and seizure are drastic powers and are not required to be construed liberally. Further, we find that the legislative intent of permitting seizure of books or documents or things in terms of sub-section (2) of Section 67 of the Act is crystal clear and it does not permit seizure of currency or valuable assets, simply, on the ground that the same represent unaccounted wealth. The mischief rule or the Heydon's rule (propounded in the year 1584 in Heydon case [*Heydon case*, (1584) 3 Co Rep 7 : 76 ER 637]) requires a statute to be interpreted in the light of its purpose. The purpose of the Act is not to proceed against unaccounted wealth. The provision of Section 67 of the Act is also not to seize assets for recovering tax. Thus, applying the principle of purposive interpretation, the power under Section 67 of the Act cannot be read to extend to enable seizure of assets on the ground that the same are not accounted for.

XXXX XXXX XXXX

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

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

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13. In view of the aforesaid, the present application is allowed. The respondents are directed to forthwith refund and release the cash quantified at INR 16,00,000/-.

14. The application is disposed of on the aforesaid terms.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

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