

(2023) 06 KL CK 0376

In the High Court Of Kerala

Case No : Writ Petition (C) No. 21772 Of 2022

Dhanya Sreekumari

APPELLANT

Vs

State Tax Officer (IB)

RESPONDENT

Date of Decision : 27-06-2023

Acts Referred:

Central Goods and Services Tax Act, 2017 — Section 67, 67(2)

Citation : (2023) 06 KL CK 0376

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : Harisankar V. Menon, Meera V.Menon, R.Sreejith, K.Krishna, Dr. Thushara James

Final Decision : Disposed Of

Judgement

T.R. Ravi, J

1. The petitioner is running an industrial unit that is involved in the manufacture and sale of Idly/Dosa batter, Parotta (half-cooked), Chappathi, etc. It is stated that the Unit has been functioning from the year 2010 onwards, and the 1st petitioner was awarded the Best Woman Entrepreneur Award 2016 by the Government of Kerala. The 1st petitioner is marketing her products through the 2nd petitioner. An Investigating Team represented by the 1st respondent conducted an inspection of the Manufacturing Unit as well as the residence of the 1st petitioner. The team found Rs.32,73,900/- kept as cash and seized the same as per the order of seizure dated 13.06.2022, a copy of which has been produced as Ext.P1. It can be seen from Ext.P1 that along with cash, pay-in slips for depositing an amount totalling Rs.21,02,000/- were also seized by the respondents. According to the petitioner, pay-in-slip for depositing a further sum of Rs.8,00,000/- was also present in the Safe from which a sum of Rs.11,71,900/- was seized, but the same had not been noted in the order of seizure. The case of the petitioner is that the respondents are not entitled to seize cash by invoking the power available under Section 67 of the CGST Act.

The petitioner has also preferred Ext.P4 representation before the 4th respondent for the return of the seized cash as early as on 22.06.2022. When no action was forthcoming, the writ petition was filed seeking direction for the return of the cash and for quashing Ext.P1 to the extent it seizes the cash. In the alternate, there is also a prayer for a direction to consider and pass orders on Ext.P4 application.

2. The 4th respondent has filed a counter affidavit. It is stated in paragraph 4 that on preliminary verification, it is found that there is tax evasion. It is contended that the word 'things' in Section 67(2) will include cash also, and hence the seizure of cash was very much in accordance with the law. It is also submitted that if the cash seized is released, it will disintegrate the entire proceedings of verification of the seized article, which is in progress. Reliance is also placed on the judgments in Smt. Kanishka Matta V. Union of India & Ors. ([2021] 89 GSTR 56 (MP)), BA Continuum India Pvt. Ltd V. Union of India and Others ([2021] 89 GSTR 73 (Bom)) and the decision of Delhi High Court in WP(C) No.12499/2021 in support of the contention that cash can also be seized under Section 67 of the CGST Act.

3. Heard the counsel for the petitioner and Smt.Thushara James, learned Senior Government Pleader for the respondents.

4. The counsel for the petitioners placed before me the judgment of a Division Bench of this Court in W.A.No.514 of 2023 filed against the judgment of a Learned Single Judge in W.P. (C)No.39406 of 2022. The said writ petition was also concerning the release of seized cash. The learned Single Judge had directed the concerned Officer to consider and pass orders on the representation preferred for the release of cash, rejecting the contention of the assessee that the seizure of cash was unwarranted since the investigation was on alleged evasion of tax. The Division Bench, after considering Section 67 of the CGST Act, held that the authority to seize "things" may include cash in appropriate cases, but it was unwarranted in the case before the Division Bench. The Court specifically held that in an investigation aimed and detecting tax evasion under the CGST Act, the Court fails to see how cash can be seized, especially when it is an admitted case that the cash did not form part of the stock-in-trade of the appellant's business. In the said case, the appellant was involved in the business of quarry. The Court also considered the findings of the Intelligence Officer in the said case that it was suspicious as to why large amounts had been kept idle without being deposited in the Bank. The Court held that such findings only reveal the extent to which the authorities under the Act are misinformed of their powers and the limits of their jurisdiction. It was observed that the said findings might be justified if the Officer was an Officer attached to the Income Tax Department and that in the context of the GST Act, the findings are wholly irrelevant. On the above said findings, the Division Bench directed the respondents therein to forthwith release the cash against a receipt to be obtained from the appellant. In the case on hand also, it is admitted that the

petitioners are engaged in the manufacture and sale of dosa/idly batter, etc., and that cash has been seized from the house. An additional fact is that the authorities had also seized pay-in-slips which would show that the cash was intended to be deposited in the Bank. As observed by the Division Bench, the cash being not a stock-in-trade of the petitioners, was not a thing that ought to have been seized. The seizure was one year back, and there is no reason to retain it any further.

5. In the above circumstances, the writ petition is disposed of directing the respondents to release the cash seized from the petitioners forthwith, at any rate, within a week from the date of receipt of a copy of this judgment.