



2023:KER:64554

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

FRIDAY, THE 20TH DAY OF OCTOBER 2023 / 28TH ASWINA, 1945

WP(C) NO. 34654 OF 2023

PETITIONER/S:

VELAYUDHAN GOLD LLP
HAVING ITS OFFICE AT ROOM NO.27/22/3, JUBILEE ROAD,
PERINTHALMANNA P.O, MALAPPURAM DISTRICT, KERALA 679322
(REPRESENTED BY ITS MANAGING DIRECTOR RISHIKESH K.K, AGED
27 YEARS, S/O MOHANDAS K.K, RESIDING AT KOLAVARKUNATH
HOUSE, RAMAPURAM P.O MALAPPURAM DISTRICT, PIN - 679321

BY ADVS.M.P.SHAMEEM AHAMED
NAEEM M.M;
AKHIL PHILIP MANITHOTTIYIL
DANIYA RASHEED PALLIYALIL
MUHAMMED FIRDOUZ A.V.

RESPONDENT/S:

- 1 INTELLIGENCE OFFICER, INTELLIGENCE UNIT, KOTTARAKKARA
O/O THE SENIOR INTELLIGENCE OFFICER/INTELLIGENCE OFFICER OF
STATE TAX, INTELLIGENCE UNIT- KOTTARAKKARA, STATE GST
COMPLEX, BAPUJI NAGAR, ASRAMAM, KOLLAM, PIN - 691002
- 2 INTELLIGENCE OFFICER, INTELLIGENCE UNIT 3, SGST DEPARTMENT,
ERNAKULAM
OFFICE OF THE INTELLIGENCE OFFICER, INTELLIGENCE UNIT NO.3,
ERNAKULAM SGST DEPARTMENT, KERALA 2ND FLOOR KUREEKAL
BUILDING, EDAPALLY, KOCHI, PIN - 682024
- 3 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, TAX DEPARTMENT,
SECRETARIAT, TRIVANDRUM, PIN - 695001



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W.P.(C) No.34654/2023

-2-

OTHER PRESENT:

RESHMITA RAMACHANDRAN-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
20.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



J U D G M E N T

The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner impugning the order of seizure dated 26.05.2023 in Ext.P3 passed by the 1st respondent as well as the order of confiscation dated 23.09.2023 in Ext.P8 passed by the 2nd respondent.

2. Intelligence Officer, Intelligence Unit of the State Goods and Services Tax Department Kerala, Kottarakkara, conducted a search at the business premises of M/s Sobhana Jewellery, Main Road Ottappalam, Palakkad. The search took place on 26.05.2023 at 3.00 p.m. after the authorisation was given by the Joint Commissioner under Section 67(2) of the Kerala State Goods and Services Tax Act/Central Goods and Services Tax Act 2017 (for short, 'SGST/CGST Act 2017'). After conducting the search operation, a Mahazar was prepared.



The business premises of M/s Sobhana Jewellery consist of a two-storeyed building. During the search of the first floor, it was seen that some gold ornaments were kept in a bag. Sri Jaleesh A and Sri Raju, who claimed themselves as employees of the petitioner herein, were present during the time of search at the business premises of M/s Sobhana Jewellery. During further examination, the gold ornaments in the bag were found to be accompanied by a delivery challan with the details as mentioned in the notice under Section 130 of the SGST/CGST Act 2017.

2.1 Delivery challan was issued by the petitioner. The delivery challan endorses 22kt gold ornaments with net weight of 1332.590 gms in the name of M/s Sobhana Jewellery. The delivery challan was issued for the transportation of the aforesaid ornaments from the petitioner to M/s Sobhana Jewellery. The stock of gold ornaments was physically verified



by the Intelligence Officer in the presence of witnesses at the business premises of M/s Sobhana Jewellery, and the net weight of the gold ornaments was found to be 1647.97 grams. Discrepancies were found between the documents and the actual stock of gold in the bag. As a result, the gold ornaments found in the bag were seized by the Intelligence Officer, and a seizure memo was prepared in Form INS 02.

2.2 Summons under Section 70(1) of SGST/CGST Act 2017 was issued to the petitioner. In response to the summons, the Managing Partner of the petitioner, Sri Rishikesh K K, appeared before the Intelligence Officer. A detailed statement was recorded. The Managing Partner of the petitioner, in his statement, said that he holds ownership of the seized gold ornaments and Sri Jaleesh A, the person present at the premises of the M/s Sobhana Jewellery, was one of the Partners of the petitioner and Sri Raju was an employee of the



Firm.

2.3 Finding discrepancies and violations of Rule 56(17) of the SGST/CGST Rules 2017, as well as Rule 55 of the SGST/CGST Rules 2017, the show cause notice was issued to the petitioner demanding penalty in lieu of confiscation of goods payable at Rs.91,70,954/-. The petitioner was given 15 days' time to file a reply and to remain present for a personal hearing on 27.07.2023 at 11.00 a.m. at the Office of the Intelligence Officer, Unit 3, SGST Department, Edappally. The petitioner submitted its reply on 14.08.2023 in Ext.P7.

2.4 The said show cause notice was adjudicated by the Intelligence Officer *vide* impugned order in Ext.P8. The petitioner's contention that there was no authorisation granted by the Joint Commissioner for the purpose of conducting the search and seizure of the gold ornaments recovered and seized from the bag of the Partner and



employee of the petitioner, who were present at the premises of M/s Sobhana Jewellery and therefore, in the absence of such authorisation under Section 67 of the SGST/CGST Act 2017, the seizure of the gold ornaments of the petitioner is null and void and consequent actions also become void *ab initio*.

3. Sub-section (2) of Section 67 of the SGST/CGST Act 2017 has been taken note of by the Intelligence Officer, which reads as under:

“67. Power of inspection, search and seizure

(1)

(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 or 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.”

4. Learned counsel for the petitioner submits that there was no authorisation in respect of the jewellery items of the petitioner, which were seized from the premises of M/s Sobhana Jewellery. Sub-section (2) of Section 67 contemplates three aspects for seizing the articles, that too with the prior permission of the Officer not below the rank of Joint Commissioner which are: (i) there has to be reasons to believe that any goods, documents, books or things which are likely to be confiscated would be useful or relevant for the proceedings under the SGST/CGST Act 2017; (ii) these goods, books or



documents are placed in a secreted place; and (iii) these goods would be relevant for any proceedings under the Act.

4.1 Learned Counsel for the petitioner submits that in the absence of such satisfaction or authorisation, the seizure becomes illegal, null and void. Therefore, the consequent proceedings, including the penalty for the release of the goods, are liable to be quashed.

5. From the perusal of sub-section (2) of Section 67 of SGST/CGST Act 2017, it is evident that when search and seizure operations are authorised, at that time, it would not be known which are the items or documents or books which might be recovered or which would have been kept at a secreted place. Authorisation has to be in general terms and cannot be with respect to any specific books, items, things or documents. What is relevant is that while granting authorisation for search and seizure operations, the authority granting such



permission, i.e., Joint Commissioner or Officer above the rank of Joint Commissioner, should have reasons to believe that the goods, documents or things hold relevance and are useful in any legal proceedings under the SGST/CGST Act 2017 and the same are secreted at a particular place.

5.1 In the present case, it is not in dispute that the search and seizure operation was authorised by the Joint Commissioner. It has been a finding of fact and of record that the search operation was authorised under Section 67(2) of the SGST/CGST Act 2017 in Form INS 01 issued by the Joint Commissioner of State Tax, INA Thiruvananthapuram. The petitioner's gold jewellery items were also found stored in a bag at the premises of M/s Sobhana Jewellery. The contention of the petitioner that there was no authorisation for the seizure of 1647.970 grams of gold, the property of the petitioner, does not merit consideration as there was



authorisation for the search of the premises of M/s Sobhana Jewellery and these gold items, which the petitioner had later on claimed ownership, was found in a bag in the premises of M/s Sobhana Jewellery.

5.2 There cannot be authorisation in respect of each and every person and each and every article, goods, books, and documents which may be discovered during the search operation. The authorisation has to be done in respect of the business premises of an assessee, and if things, items, books or documents are found that the authorised officer has reasons to believe that they would be relevant for the purpose of proceeding under the SGST/CGST Act 2017, they are liable to be seized. Therefore, I do not find any substance in the submission of the learned Counsel for the petitioner that there was no authorisation under Section 67(2) of the SGST/CGST Act 2017 for the seizure of the gold ornaments weighing



1647.970 grams.

In view thereof, I find no substance in this writ petition. However, if the petitioner is aggrieved by the impugned order, he may take recourse to the remedy as may be available to him under the provisions of the SGST/CGST Act and Rules 2017.

sd/-

DINESH KUMAR SINGH

JUDGE

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APPENDIX OF WP(C) 34654/2023

PETITIONER EXHIBITS

- Exhibit P1 COPY OF THE CIRCULAR NO. 10/10/2017 DATED 18.10.2017
- Exhibit P2 COPY OF THE CHALLAN NO. DC/23-24/7
- Exhibit P3 COPY OF THE SEIZURE MEMO DATED 26.05.2023 ISSUED BY THE 1ST RESPONDENT
- Exhibit P4 COPY OF THE LETTER DATED 30.05.2023 ISSUED BY THE SOBHANA JEWELLERY ALONG WITH ENGLISH TRANSLATION
- Exhibit P5 COPY OF THE STATEMENT RECORDED BY THE 1ST RESPONDENT FROM RIDHESH T. P OF SOBHANA JEWELLERY UNDER SEC 70 OF THE CGST ACT ALONG WITH ENGLISH TRANSLATION
- Exhibit P6 COPY OF THE SCN DATED 7/07/2023 ISSUED BY THE 2ND RESPONDENT
- Exhibit P7 COPY OF THE REPLY DATED 14.08.2023
- Exhibit P8 COPY OF THE ORDER NO. INTU-III/GST/1/23-24 DATED 23.09.2023 PASSED BY THE 2ND RESPONDENT