

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

FRIDAY, THE 24TH DAY OF MARCH 2023 / 3RD CHAITHRA, 1945

WA NO. 514 OF 2023

**AGAINST THE ORDER/JUDGMENT IN WP(C) 39406/2022 OF HIGH
COURT OF KERALA**

APPELLANTS/PETITIONERS:

- 1 SHABU GEORGE, AGED 55 YEARS
PULAKUDYIL HOUSE, ARAKUZHA-PO,
MUVATTUPUZHA-686672, PIN - 686672
- 2 GIGI MATHEW, AGED 53 YEARS
THEKKEL HOUSE, NADUKKARA, AVOLY P.O,
MUVATTUPUZHA-686670, PIN - 686670
BY ADVS.
K.N.SREEKUMARAN
P.J.ANILKUMAR (A-1768)
N.SANTHOSHKUMAR

RESPONDENTS:

- 1 STATE TAX OFFICER (IB)
STATE GOODS & SERVICES TAX DEPARTMENT,
MATTANCHERRY AT MINI CIVIL STATION,
ALUVA - 683101
- 2 JOINT COMMISSIONER (IB)
STATE GOODS & SERVICE TAX DEPARTMENT,
REVENUE TOWERS, ERNAKULAM,
KOCHI-682035
- 3 COMMISSIONER OF STATE TAXES
STATE GOODS & SERVICE TAX DEPARTMENT,
TAX TOWERS, KILLIPALAM, KARAMANA-P.O.
THIRUVANANTHAPURAM-695002.
BY SMT.M.M.JASMINE, GOVERNMENT PLEADER
BY SRI.P.R.SREEJITH, SC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
24.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WA No.514 of 2023

:2:

**A.K. JAYASANKARAN NAMBIAR
&
MOHAMMED NIAS C.P., JJ**

.....
WA No.514 of 2023

.....
Dated this the 24th day of March, 2023

JUDGMENT

A.K.Jayasankaran Nambiar.J

This writ appeal is preferred by the petitioner in WP(C)No.39406 of 2022, aggrieved by the judgment dated 16.2.2023 of a learned single Judge who disposed the writ petition directing the first respondent - State Tax Officer (IB) to consider and pass orders on a representation preferred by the appellants herein for release of the cash that was seized from his premises in connection with an investigation done by the authorities under the GST Act. The learned single Judge did not accept the contention of the appellant that the seizure of cash was unwarranted especially when the investigation itself was for alleged evasion of tax due from the appellants under the GST Act.

2. In the appeal before us, the learned counsel for the appellant points out that, while it may be a fact that the statutory provisions authorize the seizure of 'things' from the premises of an assessee who is proceeded against under the GST Act, and the word 'things' would include

cash in appropriate cases, the instant is a case where the seizure of cash was wholly unwarranted, more so, when the cash did not form part of the stock in trade of any business stated to have been carried on by the appellant. It is further pointed out that although the inspection of the premises of the appellant was conducted as early as on 9.6.2022, nothing was heard from the authorities till November 2022, when the appellant preferred a representation seeking a return of the cash seized from his premises. It is stated that the appellant has still not been served with any show cause notice pursuant to the seizure of the cash from his premises.

3. During the pendency of this writ appeal, the Intelligence Officer passed an order dated 21.3.2023, disposing the representation preferred by the appellants as per the directions of the learned single Judge. On a reading of the order that rejects the said representation we find that the stand taken by the Intelligence Officer is essentially that in view of the specific provisions of Section 67(2) of the CGST Act, which authorises the seizure of 'things', which *inter alia* includes cash also as held by the High Court of Madhya Pradesh in the judgment dated 26.8.2020 in WP(C)No.8204 of 2020, the authority was justified in seizing the cash and retaining the same pending a culmination of the investigation. We must admit to being a bit puzzled by the stand taken by the said Intelligence Officer in the order dated 21.03.2023 that is now produced before us by the learned Government Pleader. 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 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. Moreover, as the respondent has retained the seized cash for more than six months and is yet to issue a show cause notice to the appellants in connection with the investigation, there can be no justification for a continued retention of the said amount with the respondent. We therefore, allow this appeal by directing the first

WA No.514 of 2023

:5:

respondent to forthwith release to the appellant the cash seized from the premises, against a receipt to be obtained from him. The amount shall be released to the appellant without any delay, and at any rate, within a week from the date of receipt of a copy of this judgment.

The writ appeal is allowed as above.

Sd/- A.K. JAYASANKARAN NAMBIAR,

JUDGE

Sd/- MOHAMMED NIAS C.P.

JUDGE

dlk/24.3.2023