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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision:* 05.09.2023
 + **W.P.(C) 238/2023 & CM APPL. 900/2023, CM APPL. 16376/2023, CM APPL. 16399/2023**

BEST CROP SCIENCE PVT. LTD.

..... Petitioner

Through: Mr. Vivek Sarin, Mr. Ajay K. Dubey, Mr. Dibya Prashant Singh, Ms. Divyanshi Singh, Mr. Akash Gupta and Mr. Satish C. Kaushik, Advs.

versus

SUPERINTENDENT, CGST, DELHI WEST AND
 ORS.

..... Respondents

Through: Mr. Aditya Singla, SSC, CBIC with Ms. Peehu Singh Hooda, Adv. for CBIC.
 Mr. Harpreet Singh, Sr. Standing Counsel with Ms. Suhani Mathur, Mr. Jatin Kumar Gauar and Mr. Akshay Saxena, Advs. for R-4 to 8.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. (Oral)

1. The petitioner has filed the present petition, *inter alia*, aggrieved by the search conducted in its premises on 05.05.2022 and 26.08.2022 under Sub-section (2) of Section 67 of the Central Goods and Services Tax Act, 2017 (hereafter '**the CGST Act**'). The petitioner claims that the searches were conducted by the proper officer without having any reason to believe that the petitioner had suppressed any transaction relating to supply of goods and services or



to the stock of goods in its possession.

2. During the course of the proceedings, the concerned officer issued a demand cum show cause notice dated 01.03.2023 (hereafter '**impugned show cause notice**'). According to the petitioner, the impugned show cause notice was issued beyond the period as specified under Sub-section (7) of Section 67 of the CGST Act, and therefore, is liable to be quashed. Accordingly, on 24.05.2023, the petitioner moved an application (CM No.28074/2023) seeking early disposal of the above-captioned petition. On the said date, the learned counsel for the petitioner submitted that the petition be confined to the petitioner's challenge to the impugned show cause notice. The petitioner had also moved an application seeking amendment in the writ petition. Although the petitioner has sought several prayers in its petition but it confined the petition to the limited extent of challenging the impugned show cause notice.

3. Accordingly, with the consent of the parties, the present petition was heard confined to the said issue.

4. Mr. Sarin, learned counsel appearing for the petitioner contended that the impugned show cause notice was issued beyond the period of six months, as contemplated under Sub-section (7) of Section 67 of the CGST Act and therefore, the goods seized were liable to be returned. He also contended that the impugned show cause notice was, thus, barred by limitation.

5. He relied upon the decision of the Gujarat High Court in the



case of *Devesh Radheshyamji Kabra v. State of Gujarat*¹ and on the strength of the said decision, submitted that the goods seized are liable to be returned.

6. He also referred to the decision of the Division Bench of this Court in the case of *Mohd. Salman Khan v. Union of India*² which was rendered in the context of Section 110 of the Customs Act, 1962 (hereafter '**the Customs Act**'). He submitted that the language of Section 110 of the Customs Act is similar to the language of Sub-section (2) of Section 67 of the CGST Act.

7. Mr. Harpreet Singh, learned counsel appearing for respondent no.4 to 8 countered the aforesaid submissions. He submitted that the goods were seized on 21.09.2022 and the impugned show cause notice was issued on 01.03.2023, which was within the period of six months from the seizure of the said goods. Thus, according to him, the goods were not liable to be returned. He also submitted that subsequently on 29.05.2023, an order confiscating the goods, in question, was passed and the petitioner has challenged the said order in another petition filed in this court. He submitted that scheme of Section 67 of the CGST Act was materially different from the scheme of Section 110 of the Customs Act and therefore, the decision, rendered by courts in respect of the Customs Act were inapplicable to proceedings under the CGST Act. He earnestly contended that there was a distinction between 'detention' of goods and their 'seizure'. He submitted that it

¹ 2021:GUJHC:4370-DB

² 2016 SCC OnLine Del 6739



was not practicable to seize the goods immediately on conducting a search as it was necessary for the concerned officer to satisfy himself whether the goods are liable to confiscation. In addition, it was also necessary to comply with the principal of natural justice and afford the tax payer an opportunity to establish that the goods were not liable for confiscation. He submitted that, therefore, in the first instance, the proper officer had passed an order of prohibition under first proviso to Sub-section (2) of Section 67 of the CGST Act and thereafter, had proceeded to pass a seizure order.

Reasons and Conclusions

8. In the present case, an order under first proviso to Sub-section (2) of Section 67 of the CGST was passed on 26.08.2022, whereby the petitioner was directed not to deal with the goods in question. Subsequently, the concerned officer had passed a seizure order on 21.09.2022. One of the principal questions to be addressed is whether, in terms of the Sub-section (7) of Section 67 of the CGST Act, the goods were liable to returned as the notice in respect of the seized goods were not issued within the period of six months from the date of the order dated 26.08.2022 prohibiting the petitioner from dealing with the said goods.

9. Sub-section (2) of Section 67 of the CGST reads as under:

“Section 67. Power of inspection, search and seizure.

xxx

xxx

xxx



(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 of 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.”

10. It is clear from the above that the first proviso to Sub-section (2) of Section 67 of the CGST is applicable only when it is not practicable to seize the goods. The contention that it is open for the concerned authorities conducting search, to first pass an order under the first proviso to Sub-section (2) of Section 67 of the CGST and, thereafter, take an informed decision whether to seize the goods, is unmerited.

11. The action for seizure of the goods is required to be predicated on a reason to believe that the goods are liable for confiscation. This condition is required to be satisfied, before passing any order under the proviso to Sub-section (2) of Section 67 of the CGST as well. The first proviso permits the concerned authorities to pass an order prohibiting the tax payer from parting with the goods in cases where goods are liable for seizure, but is not practicable to do so. The order



of prohibition is not a stop gap arrangement for the department to take an informed decision whether to seize the goods or not seize the goods as is contended by Mr. Singh.

12. The assumption that it is permissible for the proper officer to pass an order of prohibition under the proviso to Sub-section (2) of Section 67 of the CGST Act while considering the question whether there are reasons for confiscation of the goods and the goods are liable to be seized is unmerited. The contention that it is not practicable to seize the goods before affording the taxpayer an opportunity to establish that the goods are not liable for confiscation and therefore an order of prohibition is required to be passed, is without any basis.

13. The reliance placed by Mr. Singh in the case of *Golden Cotton Industries v. Union of India*³ is misconceived.

14. In that case, the proper officer had seized the goods by an order dated 05.12.2018. Thereafter, an order of prohibition [in the Form GST-INS-02 under Rule 139(4) of the CGST Rules] was passed. The petitioner had challenged the said order on the ground that there was nothing to indicate that the goods, covered under the order of prohibition, were secreted. Gujarat High Court had referred to the decision of the Supreme Court in *Gian Chand & Ors. v. State of Punjab*⁴ and held that the word 'secreted' as used in Sub-section (2) of Section 67 of the CGST Act, is required to be understood in light of the aforesaid decision. The Court further rejected the contention that pending the confiscation proceedings, the goods could not be seized or

³ 2019(29) G.S.T.L. (587) (Guj.)

⁴ 1962 Supplementary 1 SCR 364



be subjected to an order of prohibition.

15. The question whether the goods are liable to be returned in terms of Sub-section (2) of Section 67 of the CGST Act if no notice is issued in respect of the said goods within a period of six months in terms of Sub-section (7) of Section 67 of the CGST Act, was not a subject matter of controversy in *Golden Cotton Industries v. Union of India*³. Thus, the reliance placed on the said decision is clearly inapposite.

16. It is relevant to note that in *Devesh Radheshyamji Kabra v. State of Gujarat*¹, Gujarat High Court referred to Sub-section (2) and (7) of Section 67 of the CGST Act and held as under:

“6. The plain reading of Sub-section-(7) of Section-67 referred to above would indicate that from the date of seizure under Sub-section (2) if notice is issued within six months thereof, the seized properties will have to be returned to the person from whose possession they were seized. There is a proviso for the purpose of extending the said period on sufficient cause. Mr. Dave, the learned AGP upon instructions from the concerned department makes a statement that no notice has been issued till this date as contemplated under Sub-section-(7) of Section-67 of the Act. There has been no extension also of the time period as provided under the proviso.”

17. It is also relevant to refer to pre-amended Sub-section (1) and (2) of Section 110 of the Customs Act. The same are set out below:

110. Seizure of goods, documents and things. — (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:



Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner 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.

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding six months.”

18. It is also apparent from the second proviso to Sub-section (1) of Section 110 of the Customs Act that where it is not practicable to seize the goods, the proper officer may serve an order directing the person, who is in possession of the said goods, not to remove, part with or deal with the goods except with the previous permission of the said officer. The language of second proviso, as existing then, is similar to the language of the proviso to Sub-section (2) of Section 67 of the CGST Act in material aspects. In terms of Sub-section (2) of Section 110 of the Customs Act, the goods, which are seized under Sub-section (1) of Section 110 of the Customs Act, are liable to be returned if no notice is issued under Clause (a) of Section 124 of the Customs Act within a period of six months from the said seizure. The provisions of pre-amended Sub-section 1&2 of 110 of the Customs Act came up for consideration before this Court in the case of *Mohd. Salman Khan v. Union of India*². In the said case, the Customs Department had detained certain Nepalese currency from the petitioner while he was on the way to Dubai. No notice under Sub-section (2) of Section 110 of the Customs Act was issued within a period of six months from the



date on which the petitioner was dispossessed of the Nepalese currency (equivalent to ₹3.1 lakhs of Indian currency). It was contended on behalf of the Revenue that there is a distinction between 'detention of currency' and its 'seizure' and the goods (Nepalese currency) were detained but were not seized; therefore, the provision to Sub-section (2) of Section 110 of the Customs Act was not applicable. In this context, the Court had held as under:

“8. Whatever may be the justification that the Customs Department wishes to put forth for seizing the goods, there is a definite time-limit within which the Department has to determine if the seized goods are to be confiscated and if so, for giving a SCN under Section 124(a) of the Act. There appears to be no provision for 'detention' of goods instead of their 'seizure'. Therefore, where a customs officer is satisfied that the person found with the goods is not able to produce the necessary documents to justify being in possession thereof, the Customs officer has to form an opinion under Section 110(1) of the Act as to whether the said goods are liable to be confiscated and if so, to give a SCN under Section 124(a) of the Act. Section 110(2) makes it clear that the maximum time-limit for giving a SCN is six months from the date of seizure and this period is extendable by another six months provided sufficient cause is made out to the satisfaction of the Principal Commissioner or Commissioner (Customs). The procedure for dealing with confiscation of goods and for their release has been provided in the Act itself. Section 110A also talks of provisional release of the goods that have been seized.”

19. Although Sub-section (7) of Section 67 of the CGST Act refers to seizure of goods under Sub-section (2), it is clear from the scheme of Sub-section (2) of Section 67 of the CGST Act that an order of prohibition, is for all intents and purposes, an order of seizure. However, instead of physically seizing the goods, the taxpayer is directed not to part with or deal with the said goods if it is not practicable to seize the same. The contention that while the concerned



authorities are required to return the seized goods if a notice is not issued within a period of six months; the order of prohibition can continue indefinitely, clearly militates against the scheme of Section 67 of the CGST Act.

20. Having stated the above, we are of the view that no further orders are required to be passed in this regard as the order of confiscation has already been passed by the concerned authority, and the same is the subject matter of another writ petition filed by the petitioner. The question whether the order of confiscation of goods is valid or is liable to be interfered with by this Court, is a matter to be considered in that petition and no order can be passed in this petition. Consequently, the relief as sought by the petitioner – that is, the goods be returned to the petitioner – cannot be directed without considering the merits of the order of confiscation.

21. The contention that the impugned show cause notice is liable to be set aside because it has not been issued within the period of six months from the date of the order of prohibition is unmerited. The consequence of Sub-section (2) of Section 67 of the CGST Act merely provides that if no notice is issued within the stipulated period, the goods seized are liable to be returned. It does not postulate that the notice, issued after six months, is invalid. Thus, the petitioner's challenge to the impugned show cause notice on the ground that it was issued after six months of the order of prohibition is rejected.

22. We are of the view that no further orders are required to be



passed in this petition. All rights and contentions of the parties in regard to the confiscation of goods are reserved.

23. In the given circumstances, this petition is disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

SEPTEMBER 5, 2023
Ch