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Judgment No.: 010
Dt.: 09-11-2023



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Judgment Deals With

Section/Rule	Section 67
Authority	Gujarat High Court
Case Name	Bharat Kumar Pravin Kumar And Co. VS State Of Gujarat
Dated	26 th October, 2023

Brief Facts:

It is the case of the petitioner that silver bars were seized in the year 2004 by the Income Tax Department. While the petitioner had paid the due taxes, even then the silver bars were not being released and therefore, the petitioner had filed application before this Court. This Court vide an order dated 07.02.2018 released the silver bars in question.

The silver bars were sold on 19.10.2019 and the amount of sale proceeds was received through cheques. The amount was lying in the bank and therefore, cash withdrawal was made by the petitioner in the last week of October, 2020.

While the cash was being transferred by the petitioner to the branch office in Rajkot on 13.11.2020, the Department seized the cash by order dated 13.11.2020. The petitioner made a representation on 15.09.2021 for release of the cash, which has not been decided. Hence, this petition.

The petitioner has challenged the action of the respondents in not releasing the cash of Rs.69,98,400/- seized, along with appropriate interest.

Contention of Petitioner:

The seizure memo seizing cash amount of Rs.69,98,400/- was issued u/s 67(2) of the GST Act. Relying on provisions of Section 67 of the Act, the power of inspection, search and seizure, provides that cash, which is seized by the Department would not form the subject matter of seizure as they are neither goods, documents nor things, in as much as under the frame work of the Act.

When there is no reason to believe that seizure of cash is useful for or relevant to any proceedings under this Act, it cannot be seized.

In this case, cash cannot be seized under the provisions of Section 67, particularly when it is not shown as stock in trade of the assessee.

Even the definition of the word "goods" under this Act means every kind of movable property other than money.

There is no notice issued by Department in this regard and any seizure of cash is contrary to law.

Findings & Order:

Prima facie, a plain reading of Section 67(2) of the GST Act indicates that the seizure is limited to goods liable for confiscation or any documents, books or things, which may be "useful for or relevant to any proceedings under this Act".

Clearly, cash does not fall within the definition of goods. And, prima facie, it is difficult to accept that cash could be termed as a 'thing' useful or relevant for proceedings under the GST Act.

The second proviso to Section 67(2) of the GST Act also provides that the books or things so seized would be retained by the officer only so long as may be necessary "for their examination and for any inquiry or proceedings under the Act."

Once it is found that the cash did not form a part of stock in trade, it could not have been seized.

Also, the Seizure memo was dated 13.11.2020 and in accordance with section 67(7), when no Notice in respect thereof is given within 6 months of the seizure of the goods, the goods shall be returned to the person from whose possession, they were seized.

On these grounds, the petitioner is entitled that the amount of cash seized i.e. Rs.69,98,400/- to be returned to them. The Department was directed to return an amount of Rs.69,98,400/- to the petitioner.

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