

Cash cannot be considered as Goods for seizure proceedings under GST Law

The Hon'ble Gujarat High Court in the case of *M/s. Bharkumar Pravinkumar and Co. v. State of Gujarat [Special Civil Application No. 26222 of 2022 dated October 26, 2023]* allowed the writ petition and held that cash would not be considered as goods for the purpose of seizure proceedings, and it is not justified to retain cash seized by the Revenue Department for more than six months, without issuance of Show Cause Notice (“SCN”).

Facts:

M/s. Bharkumar Pravinkumar and Co. (“**the Petitioner**”) is a partnership firm engaged in the business of courier services. Silver bars of the Petitioner were seized in the year 2004 by the Income Tax Department. The silver bars were not released even after payment of taxes due. Therefore, the Petitioner moved a Special Civil Application before the Hon'ble Gujarat High Court and the Court issued orders for release of silver bars in question.

The Petitioner sold the silver bars and the amount of sale proceeds received by the Petitioner through cheque. The amount received from the sale of silver bars, was withdrawn by the Petitioner. Thereafter, the Revenue Department (“**the Respondent**”) seized the cash while the cash was being transferred to the branch office of the Petitioner vide order dated November 13, 2020. The Petitioner further made a representation for the release of cash which is pending for adjudication.

Aggrieved, the Petitioner filed a writ application for the release of cash on the ground that the cash seized would not amount to the subject matter of seizure as the cash seized is neither goods, documents or things, under the framework of the Act. It was further stated that, the cash can be seized only in cases where seizure of cash is useful or relevant for proceeding under the act. Therefore, in the present case, cash cannot be seized under the provisions of

Section 67 of the Central Goods and Services Tax Act, 2017 (“the CGST Act”) as it is also not shown as stock in trade of Assessee.

Issue:

Whether cash can be considered as goods for the purpose of seizure proceedings under GST?

Held:

The Hon’ble Gujarat High Court in the case of *Special Civil Application No. 26222 of 2022* held as under:

- Observed that, the CGST Act, is an act for levy and collection of tax on intra-state supply of goods or services or both by the Central Government, and as per Section 67(2) of the CGST Act, the Proper Officer when confiscating any goods, documents, books or things, must have a reason to believe that it would be useful or relevant to any proceedings initiated under the Act.
- Relying upon the judgement of the Hon’ble Kerala High Court in the case of *Shabu George v. State Tax Officer (IB) [WA No. 514 of 2023 dated March 23, 2023]*, the Court further observed that, Section 67(2) of the CGST Act, authorises the seizure of things, not cash particularly when the cash does not form part of the stock in trade of the business. Also, it is not justified to retain cash seized by the Respondent for more than six months, without issuance of SCN.
- Noted that, it is admitted by the Respondent, that the present case pertains to the amount of consideration received on sale proceeds of silver bars, not seizure made in relation to unexplained transactions under the CGST Act.
- Opined that, as per Section 67(7) of the CGST Act, the goods shall be returned to the person for whose possession the goods were seized, when no SCN is given within six months of the seizure of goods.

- Held that, the Petitioner is entitled to the amount of cash seized which is to be returned forthwith to the Petitioner, hence the writ petition is allowed.
- Directed that, the Respondent shall return the amount of cash seized to the Petitioner, and it is open for the Respondent to return and transmit the amount through digital mode of payment.

Relevant Provision:

Section 67 of the CGST Act:

“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 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 authorized 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.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4)

(5)

(6)

(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given 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 period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.”

(Author can be reached at info@a2ztaxcorp.com)

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