Facts of the case

The investigation, search, and seizure were conducted without jurisdiction by respondent no. 2.

The show cause notice was improperly issued by respondent no. 1.

Respondent no. 2 lacked jurisdiction, and the case was improperly transferred to respondent no. 3.

The show cause notice was not consequential to the investigation, and the proper procedure wasn't followed, thus rendering the notice invalid.

The basis of Judgment

This paragraph argues that if courts allow actions that violate established legal precedent (like the Supreme Court's directions in PUCL's case and Puttaswamy) in the name of obtaining evidence, it sets a dangerous precedent. It essentially says:

Ignoring precedent is dangerous: The court's decisions and rules are meant to protect fundamental rights (like the right to privacy, mentioned in Article 21). Allowing authorities to disregard these guidelines to gather evidence, even if the ends seem justifiable, opens the door to unchecked power and abuse.

Arbitrariness and disrespect for the law: If authorities can ignore legal procedures when pursuing evidence, it undermines the rule of law and leads to arbitrary actions. This will encourage officials to act without regard for procedures, violating the fundamental rights of citizens.

Undermining the judicial system: The court is saying allowing this kind of behavior could lead to a lack of respect for its own rulings and decisions. This, in turn, weakens the entire judicial system.

The ends do not justify the means: The argument that achieving a desired outcome (gathering evidence) justifies any method is wrong. The pursuit of justice must always remain within the bounds of the law.

In essence, the paragraph argues for strict adherence to legal procedures, even in situations where obtaining evidence might be challenging. It cautions against compromising fundamental rights in the name of expediency.

Judgment:

The court, while acknowledging the petitioner's concerns about the jurisdiction of respondent no. 2 and the procedural aspects of the investigation, ultimately held that the show cause notice issued by respondent no. 1 was valid.

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF NOVEMBER, 2024

R

BEFORE

THE HON'BLE MR JUSTICE M.I.ARUN

WRIT PETITION NO.18305 OF 2023 (T-RES)

BETWEEN:

1. M/S. VIGNESHWARA TRANSPORT COMPANY
REPRESENTED BY ITS PROPRIETOR,
MR. PRAVEEN SUVARNA,
S/O. SOMAPPA POOJARY,
AGED ABOUT 51 YEARS,
RESIDING AT VIGNESHWARA NILAYA
PANCHAVATI VILLAS,
BEHIND SHANTALA HERITAGE
VYASANGAR, YEYYADI,
MANGALORE

ALSO OFFICE NEAR AG TRUCK TERMINAL,
BENGALURU ROAD NH4,
CHITRADURGA,
KARNATAKA-577 501
REPRESENTED BY ITS PROPRIETOR

...PETITIONER

(BY SRI PRANAY SHARMA Y., ADVOCATE)

AND:

1. ADDITIONAL COMMISSIONER OF CENTRAL TAX
BENGALURU NORTH-WEST COMMISSIONERATE,
SOUTH WING, BMTC BUS STAND COMPLEX,
SHIVAJINAGAR,
BENGALURU-560 051.

2. COMMISSIONER OF CENTRAL TAX

7TH FLOOR, TRADE CENTRE,
BUNTS HOSTEL ROAD,
MANGALORE COMMISSIONERATE,
MANGALURU-575 003.

3. PRINCIPAL COMMISSIONER OF CENTRAL TAX
BENGALURU NORTH-WEST COMMISSIONERATE,
SOUTH WING,
BMTC BUS STAND COMPLEX,
SHIVAJINAGAR,
BENGALURU-560 051.

…RESPONDENTS

(BY SRI JEEVAN J. NEERALGI, ADVOCATE)

THIS PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE SHOW CAUSE NOTICE DATED 11.04.2023 ISSUED BY THE RESPONDENT NO.3 AS SHOWED IN ANNEXURE-G VIDE BEARING NO.GEXCOM/AC/FU/1423/2021-AE-OIO-COMMR-CGST-BENGALURU (NW) ISSUED BY THE RESPONDENT NO.1 IN THE INTEREST OF JUSTICE AND EQUITY INSOFAR AS PETITIONER CONCERNED ONLY ETC.

THIS PETITION COMING ON FOR FURTHER HEARING, THROUGH PHYSICAL HEARING/VIDEO CONFERENCING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE M.I.ARUN

ORAL ORDER

1. Petitioner is involved in the transportation of goods and was registered under the provisions of the Central Goods and Services Tax Act, 2017 ('the CGST Act' for short) and the Karnataka Goods and Services Tax Act, 2017 ('the KGST Act' for short). On the ground that the petitioner along with several other persons have indulged in purchase of arecanut from several persons and supplying the same to various Gutkha manufacturers without payment of appropriate applicable GST, investigation has been initiated against the petitioner under the provisions of the GST Act, which has culminated in the impugned show cause notice dated 11.04.2023 being issued from respondent no.1 (vide Annexure-G to the writ petition). Aggrieved by the same, the present writ petition is filed.

2. The petitioner in the instant writ petition has prayed for the following reliefs:

"WHEREFORE, it is respectfully prayed that, this Hon'ble Court be pleased to:

i. Issue a writ of Certiorari or any other direction or writ for quashing the show cause notice dated 11/04/2023 issued by the Respondent 3 as showed in Annexure-G vide bearing no.GEXCOM/AC/FU/1423/2021-AE-OIO-COMMR-CGST-Bengaluru (NW) issued by the Respondent No.1 in the interest of justice and equity in so far as petitioner concerned only.

ii. Issue a writ of mandamus/order /direction/appropriate order directing the Respondent authorities to restore GST registration in the interest of equity and justice.

iii. Further direct the respondents to refund the pre-deposit of Rs.50 Lakhs with interest from the date of deposit till date of refund interest of justice and equity.

iv. Pass any order, or direction as deemed fit in the facts and circumstance of the case including cost in the interest of justice and equity."

3. However, in the course of the arguments, the learned counsel for the petitioner submitted that he would withdraw the prayer pertaining to restoration of GST registration with liberty to the petitioner to file a fresh writ petition or approach the Competent Authority for restoration of the same, as the same is not consequential for the issuance of the impugned show cause notice. Learned counsel for the respondents has no objection for the same. Hence, the writ petition insofar as it relates to

the prayer of restoring the GST registration of the petitioner stands dismissed reserving the liberty to the petitioner to approach the appropriate authority or file a fresh writ petition pertaining to the same.

4. With regard to other prayers, the case of the petitioner is that investigation was initiated by respondent no.2 against the petitioner without jurisdiction. It is submitted that pursuant to the initiation of such investigation; inspection, search and seizure of several premises belonging to the petitioner as envisaged under Chapter 14 of the CGST Act/KGST Act was carried out, certain materials were seized and the petitioner was called for questioning and his submissions have been recorded. It is further submitted that the petitioner was forced to make a payment of Rs.50,00,000/- (Rupees Fifty Lakhs only) towards probable liability during investigation and the same has been paid by the petitioner under protest on 20.01.2021. It is submitted that all these things happened when the investigation was being done by

respondent no.2. It is further submitted that the petitioner is not liable to pay the said amount of Rs.50,00,000/- (Rupees Fifty Lakhs only) and has not committed any mistake as alleged. It is contended that respondent no.2 never had the jurisdiction to conduct the investigation or inspection, search or seizure or demand payments towards the probable liability during investigation. It is submitted that respondent no.2 is not the proper Officer as envisaged under the said Acts. It is further submitted that thereafter respondent no.2 realized that he does not have the necessary jurisdiction and transferred the case to respondent no.3, who is the proper Officer, to conduct the necessary investigation. But, respondent no.3 instead of conducting the investigation afresh, relying upon the records built by respondent no.2, a show cause notice has been issued under Section 74 of the CGST Act and KGST Act. It is contended that as the inspection, search and seizure is not conducted by a proper Officer, the consequential show cause notice though issued by a proper Officer under Section 74 of the

CGST Act and KGST Act has to be set aside and consequently, the respondents are also required to reimburse the sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) deposited by the petitioner.

5. Per contra, the learned counsel for the respondents, upon instructions, submits that though bulk of the investigation, inspection, search and seizure have been done by respondent no.2, respondent no.3 has also recorded certain statement of the petitioner. He further submits that though in the show cause notice respondent no.1 has relied upon the investigation, inspection, search and seizure done by respondent no.2, as the show cause notice is issued by a proper Officer, the same cannot be set aside.

6. Thus, based on the submissions made by the learned counsel for the petitioner and the respondents, it has to be concluded that substantial portion of the investigation, inspection, search and seizure in respect of the case of the petitioner has been conducted by respondent no.2 and

only the formalities have been completed by respondent no.3, who is the proper Officer and subsequently the show cause notice under Section 74 of the CGST Act and KGST Act has been issued by respondent no.1.

7. Under the said circumstances, the question that arises for consideration in the instant writ petition is, when the investigation, inspection, search and seizure is substantially completed by an improper Officer, is the show cause notice issued by a proper Officer under Section 74 of the CGST Act and KGST Act liable to be set aside.

8. It is pertinent to note that in the instant case, the investigation, inspection, search and seizure against the petitioner was commenced in the year 2020 by respondent no.2. He has inspected and seized several documents, electronic devices and other goods belonging to the petitioner and his staff and has recorded the statements of the petitioner and other concerned persons in relation to the business of the petitioner and the petitioner has deposited a sum of Rs.50,00,000/- (Rupees Fifty lakhs

only) under protest towards the probable liability towards GST on 20.01.2021 and that the investigation was transferred to respondent no.3 only in the month of June 2021 and respondent no.3 has only formally concluded the investigation and the show cause notice has been issued.

9. The respondents contend that show cause notice is issued based on the investigation done and the incriminating materials seized and they rely upon the decision of the Apex Court in ***Pooran Mal v. The Director of Inspection (Investigation), New Delhi and Others*** reported in **(1974)1 SCC 345** wherein under paragraphs 23 and 25, it has been held as under:

> "23. As to the argument based on "the spirit of our Constitution", we can do no better than quote from the judgment of Kania, C.J., in A.K.Gopalan v. State of Madras [AIR 1950 SC 27].
>
> "There is considerable authority for the statement that the Courts are not at liberty to declare an Act void because in their opinion it is opposed to a spirit supposed to pervade the Constitution but not expressed in words. Where the fundamental law has not limited, either in terms or by necessary implication, the general powers conferred upon the Legislature we cannot declare a limitation under the notion of having discovered something in the spirit of the Constitution which is not even mentioned in the instrument. It is difficult upon any general principles to limit the omnipotence of the sovereign legislative power by judicial interposition, except so

far as the express words of a written Constitution give that authority."

Now, if the Evidence Act, 1872 which is a law consolidating, defining and amending the law of evidence, no provision of which is challenged as violating the Constitution — permits relevancy as the only test of admissibility of evidence (See Section 5 of the Act) and, secondly, that Act or any other similar law in force does not exclude relevant evidence on the ground, that it was obtained under an illegal search or seizure, it will be wrong to invoke the supposed spirit of our Constitution for excluding such evidence. Nor is it open to us to strain the language of the Constitution, because some American Judges of the American Supreme Court have spelt out certain constitutional protections from the provisions of the American Constitution. In M.P. Sharma v. Satish Chander, already referred to, a search and seizure made under the Criminal Procedure Code was challenged as illegal on the ground of violation of the fundamental right under Article 20(3), the argument being that the evidence was no better than illegally compelled evidence. In support of that contention reference was made to the Fourth and Fifth Amendments of the American Constitution and also to some American cases which seemed to hold that the obtaining of incriminating evidence by illegal seizure and search tantamounts to the violation of the Fifth Amendment. The Fourth Amendment does not place any embargo on reasonable searches and seizures. It provides that the right of the people to be secure in their persons, papers and effects against unreasonable searches and seizures shall not be violated. Thus the privacy of a citizen's home was specifically safeguarded under the Constitution, although reasonable searches and seizures were not taboo. Repelling the submission, this Court observed at page 1096:

"A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction. Nor is it legitimate to assume that the

> constitutional protection under Article 20(3) would be defeated by the statutory provisions for searches."
>
> It, therefore, follows that neither by invoking the spirit of our Constitution nor by a strained construction of any of the fundamental rights can we spell out the exclusion of evidence obtained on an illegal search.
>
> 25. In that view, even assuming, as was done by the High Court, that the search and seizure were in contravention of the provisions of Section 132 of the Income Tax Act, still the material seized was liable to be used subject to law before the Income tax authorities against the person from whose custody it was seized and, therefore, no Writ of Prohibition in restraint of such use could be granted. It must be, therefore, held that the High Court was right in dismissing the two writ petitions. The appeals must also fail and are dismissed with costs."

Based on the decision of the Apex Court, it is contended by the respondents that though the investigation, search and seizure has been done by an improper Officer, the respondents are entitled to use the same against the petitioner and therefore the show cause notice, as the same has been issued by a proper Officer, cannot be set aside.

10. Whereas the petitioner submits that in ***Pooran Mal's*** case, search and seizure was not *ab initio void* and the decision is rendered in respect of utilisation of the evidence conducted during an illegal search for the

purposes of income tax and not GST. It is further contended that the said judgment has been delivered by the Apex Court in the light of the judgment of the Apex Court in A.K.Gopalan v. State of Madras [AIR 1950 SC 27] which held the field at that particular point of time, which is no longer a valid law. Reliance is placed by the petitioner on a Division Bench decision of this Court in ***C.Ramaiah Reddy v. Assistant Commissioner of Income-tax*** reported in **[2012] 20 taxmann.com 781 (Karnataka)** wherein under paragraphs 25, 60, 61 and 62 it has been held as under:

> ”25. The obvious consequence is that the requirement about the existence of reason to believe, consequent upon the information in possession and concerned authority is not satisfied, the search cannot be said to be a search under section 132 of the Act as contemplated by the provisions of section 158B of the Act. A search under section 132 as contemplated in the Chapter has to be a valid search. An illegal search is no search and the necessary corollary, in such a case, Chapter XIV-B would have no application. If the search conducted is without jurisdiction, then it would be void ab initio. If the action is illegally taken or power under the section is exercised for a collateral purpose, it is liable to be struck down by the court. If the conditions for the exercise of power are not satisfied, the proceeding is liable to be quashed. The eminent conclusion would be that Chapter XIV-B cannot be undertaken against the assessee. Pursuant to the said search, consequently the block assessment order cannot be sustained. Therefore, when the assessee challenges an

order of assessment and contends that the search, which is a sine qua non for the authorities to initiate authorisation and consequently pass an assessment order is illegal and void, the said question goes to the root of the matter. If the said contention is upheld, the assessment order would have no reason to stand.

60. A mere search or seizure, by itself would not result in foisting the liability on the assessee though it would invade his right to privacy and the fundamental right to carry on business. But, if the said search and seizure results in determination of liability and levy of tax then the assessee is said to be an aggrieved person. The said determination of liability and levy of tax would be by way of an assessment order. Then only he can avail of the remedy of appeal provided under the statute. In other words, he cannot prefer an appeal against authorisation of search and seizure as illegal. But, once such unauthorised or illegal search and seizure culminates in an assessment order, than he gets a right to challenge the assessment on several grounds including the authorisation and initiation of search and seizure without which no order of assessment could have been passed. Though the authorisation and search and seizure may not be by the Assessing Officer, the basis of such assessment order by him is the authorisation and consequent search and seizure and the material collected during the said proceedings. If the very initiation of block assessment proceeding is vitiated and is void, the assessment order passed in such proceedings would be non est and void ab initio. That is a ground available to the assessee to challenge the assessment order in an appeal. May be a procedural irregularity in conducting search and seizure may not vitiate the assessment order, but the very initiation of the proceedings if it is not in accordance with law, the initiation would be without jurisdiction, void and the consequent order would also be void. It is not a curable defect. It is not voidable at the option of the assessee. If he has not challenged the same by way of writ petition under article 226 of the Constitution, he would not lose his right to challenge the same in an appeal. There cannot be an estoppel against the statute. In this regard it is useful to notice the specific words used in sub-section (1)(b) of section 253, i.e, "an order passed by the Assessing Officer under clause (c) of section 158BC in respect of search initiated under section 132". The

language used by the Legislature tends to show that this appeal provision specifically applies to an assessment order consequent to search initiated under section 132 of the Act. In interpreting fiscal statute, the court cannot proceed to make good deficiencies, if there be any, the court must interpret the statute as it stands, and in case of doubt, in a manner favourable to the taxpayer. When the statute expressly refers to "a search initiated under section 132 of the Act", while interpreting the said provision it cannot be ignored. The expression used is capable of comprehensive impact. The words used are "a search initiated". Therefore, the subject-matter of appeal under the provision is not only the assessment order by the Assessing Officer but also "a search initiated" under section 132 of the Act. Therefore, the necessary corollary is, if the assessee contends that the search initiated under section 132 of the Act is not in accordance with law, it would not satisfy the legal requirements as contemplated under section 132(1)(a), (b), (e), then the said contention has to be considered and adjudicated upon by the Tribunal, in an appeal filed against the assessment order. Since this action of the Assessing Officer is inextricably linked with the initiation of assessment proceedings the same can be assailed before the appellate authority. If the initiation of these block assessment proceedings is vitiated, in the eye of law, there is no search and the entire proceedings based on such search has no legs to stand.

61. Therefore, in an appeal filed challenging the block assessment order, it is open to the assessee to contend that this foundation for block assessment is an illegal search. Therefore, it is obligatory on the part of the Tribunal first to go into the jurisdictional aspect and satisfy itself that the said search was valid and legal. It is only then it can go into the correctness of the order of block assessment. Therefore, it cannot be said merely because the assessee did not choose to challenge the search conducted in his premises on the aforesaid grounds by way of a writ petition under article 226 of the Constitution before the High Court, he cannot challenge the said order in appeal. In the absence of a specific provision provided under the Act for appeal against such orders, in the appeal filed against the assessment order, the Tribunal is not estopped from going into such question.

> 62. The apex court in the case of *Pooran Mal v. Director of Inspection* (*Investigation*) reported in [1974] 93 ITR 505 (SC) has held, even assuming that the search and seizure were in contravention of the provisions of Section 132 of the Income-tax Act, still the materials seized was liable to be used subject to law before the income-tax authorities against the person from whose custody it was seized. There is no quarrel with the said legal proposition. In the first place, the provisions relating to the block assessment was not in the statute on the day the said judgment was delivered by the apex court. Secondly, prior to the incorporation of the provisions of block assessment for an assessment, search was not a condition precedent. It is in that context it was held even if search and seizure is illegal, the material recovered during such illegal search and seizure could be looked into for the purposes of assessment and act, but that is not possible, in case of block assessment. Even if a return is filed in pursuance of a direction issued under the said Chapter and the material secured during search and seizure which is declared as illegal is looked into, still the order of assessment passed in this proceedings would be a nullity because the very initiation of the proceedings is void. Those materials secured in the illegal search and seizure would certainly be made use of in the assessment proceedings under the Act other than the block assessment proceedings and, therefore, the contention that the assessment order would not get vitiated because of illegal search and seizure as it is based on the returns filed and the materials secured during the illegal search and seizure is, without any substance."

11. Reliance is also placed on a judgment delivered by a Division Bench of Bombay High Court in ***Vinit Kumar vs. Central Bureau of Investigation and Others*** reported in ***2019 SCC OnLine Bom 3155 : (2020) 1 AIR Bom R***

(Cri) 1 wherein under paragraphs 39 and 42, it has been held as under:

> "39. *Poorn Mal* (supra) is a decision where the facts and issues were not similar to the instant case. Here the action of the executive is in breach of the fundamental rights under Article 21 of the Constitution of India as also directions of the Supreme Court in PUCL's case (supra), in that case there was no direction or provision which could mandate the destruction of record in absence of valid order. No case of any infraction of Article 21 of the Constitution of India was raised. That apart, Pooran Mal (supra) inter alia follows M. P. Sharma (supra) and majority opinion in A. K. Gopalan v. State of Madras [1950 SCC 228:1950 SCR 88] which today stand overruled. The following paragraphs from Pooran Mal (supra) where reliance is placed on A. K. Gopalan (supra) and M. P. Sharma (supra) which are now overruled by the nine judges constitution bench decision in K.T.Puttaswamy (supra):
>
> > "23. As to the argument based on "the spirit of our Constitution", we can do no better than quote from the judgment of Kania, C. J. in A. K.Gopalan v. The State of Madras:
> >
> > "There is considerable authority for the statement that the Courts are not at liberty to declare an Act void because in their opinion it is opposed to a spirit supposed to pervade the Constitution but not expressed in words. Where the fundamental law has not limited, either in terms or by necessary implication, the general powers conferred upon the Legislature we cannot declare a limitation under the notion of having discovered something in the spirit of the Constitution which is not even mentioned in the instrument. It is difficult upon any general principles to limit the omnipotence of the sovereign legislative power by judicial interposition, except so far as the express words of a written Constitution give that authority."
> >
> > .....
> >
> > In *M.P. Sharma v. Satish Chander*, already referred to, a search and seizure made under the Criminal Procedure Code was challenged as illegal on the ground of violation of the fundamental right under Article 20(3), the argument

being that the evidence was no better than illegally compelled evidence. In support of that contention reference was made to the Fourth and Fifth amendments of the American Constitution and also to some American cases which seemed to hold that the obtaining of incriminating evidence by illegal seizure and search tantamounts to the violation of the Fifth amendment. The Fourth amendment does not place any embargo on reasonable searches and seizures. It provides that the right of the people to be secure in their persons, papers and effects against unreasonable searches and seizures shall not be violated. Thus the privacy of a citizen's home was specifically safeguarded under the- Constitution, although reasonable searches and seizures were not taboo. Repelling the submission, this Court observed at page 1096."

A power of search and seizure is in any system of jurisprudence in overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction. Nor is it legitimate to assume that the constitutional protection under article 20(3) would be defeated by the statutory provisions for searches.

It, therefore, follows that neither by invoking the spirit of our Constitution nor by a strained construction of any of the fundamental rights can we spell out the exclusion of evidence obtained on an illegal search."

42. We may also add here that if the directions of the Apex Court in *PUCL'case* (supra) which are now re-enforced and approved by the Apex Court in *K.T. Puttaswamy* (supra) as also the mandatory rules in regard to the illegally intercepted messages pursuant to an order having no sanction of law, are permitted to be flouted, we may be breeding contempt for law, that too in matters involving infraction of fundamental right of privacy under Article 21 the Constitution of India. To declare that dehorse the fundamental rights, in the administration of criminal law, the ends would justify the means would amount to declaring the Government authorities may violate any directions of the Supreme Court or mandatory statutory rules in order to secure evidence against the citizens. It would lead to manifest arbitrariness and

> would promote the scant regard to the procedure and fundamental rights of the citizens, and law laid down by the Apex Court."

Perusal of the aforementioned decisions show that none of them have been decided insofar as it relates to GST law in the country.

12. In the light of the same, it is essential to analyze the provisions of CGST Act and KGST Act before pronouncing upon whether inspection, search and seizure has to be necessarily conducted by a proper Officer for issuance of a show cause notice under Section 74 of the CGST Act and the KGST Act.

(i) Section 2(91) of the CGST Act defines 'proper officer' as follows:

> "2,(91) "proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;"

(ii) Section 3 of the CGST Act reads as under:

> "3. The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely:-
>
> (a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,

(b) Chief Commissioners of Central Tax or Directors General of Central Tax,

(c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,

(d) Commissioners of Central Tax or Additional Directors General of Central Tax,

(e) Additional Commissioners of Central Tax or Additional Directors of Central Tax,

(f) Joint Commissioners of Central Tax or Joint Directors of Central Tax,

(g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,

(h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and

(i) any other class of officers as it may deem fit:

Provided that the officers appointed under the Central Excise Act, 1944 (1 of 1944) shall be deemed to be the officers appointed under the provisions of this Act."

(iii) Section 5 of the CGST Act reads as under:

"5.(1) Subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him.

(3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.

(4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and

discharge the duties conferred or imposed on any other officer of central tax."

13. In the instant case, it is not in dispute that respondent no.1 is the proper officer for inspection, search and seizure and also issuance of show cause notice and not respondent no.2.

14. Chapter 14 of the CGST Act pertains to inspection, search, seizure and arrest. Under the said Chapter, Sections 67 and 70 read as under:

"CHAPTER XIV
INSPECTION, SEARCH, SEIZURE AND ARREST

Power of inspection, search and seizure.

67.(1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that–

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or

the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(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.

(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) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any *almirah*, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, *almirah*, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence

of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

(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.

(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the

payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.

Power to summon person to give evidence and produce documents.

70.(1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

1(A) All persons summoned under sub-section (1) shall be bound to attend, either in person or by an authorised representative, as such officer may direct, and the person so appearing shall state the truth during examination or make statements or produce such documents and other things as may be required.

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860)."

15. Chapter 15 of the CGST Act pertains to demands and recovery and Section 74 of the CGST Act reads as under:

"CHAPTER XV
DEMANDS AND RECOVERY

Determination of tax, pertaining to the period up to Financial Year 2023-24, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.—

74.(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty

equivalent to fifteen per cent of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five percent of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

(12) The provisions of this section shall be applicable for determination of tax pertaining to the period up to Financial year 2023-24.

Explanation 1.—For the purposes of section 73 and this section,—

> (i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;
>
> (ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded."

Thus, reading of the aforementioned provisions shows that it is only a proper Officer who can investigate into evasion of GST and inspection, search and seizure and arrest can be done only by the proper Officer failing which the same will have to be held invalid and based upon the inspection, search and seizure if the proper Officer comes to the conclusion that there is *mens rea* involved as contemplated under Section 74 of the CGST Act, he can issue a notice under Section 74 and not otherwise. In the instant case, admittedly, substantial part of the investigation including search and seizure of the materials has been done by respondent no.2 who is not the proper Officer and under the circumstances, the said investigation, inspection, search and seizure in respect of the petitioner herein has to be considered *ab initio void*.

When the same is considered as *ab initio void*, notice issued under Section 74 of the CGST Act based upon search, seizure and the statements recorded from the petitioner which has been relied upon, has to be considered illegal and that there is no satisfaction on part of the proper Officer for issuance of the notice under Section 74 of the CGST Act. If respondent no.2 after investigation has transferred the case to respondent no.3, for issuance of notice under Section 74, respondent no.3 was required to redo the investigation and come to an independent conclusion as contemplated under Section 74 of the CGST Act and only thereafter a fresh notice requires to be issued. Respondent no.1 cannot issue a notice under Section 74 on the 'borrowed satisfaction'. Under the said circumstances, the impugned notice is liable to be set aside. Consequently, the respondents are required to be directed to refund the sum of Rs.50,00,000/- deposited by the petitioner and also return the seized documents and other goods which were seized by respondent no.2 to the petitioner. Liberty will have to be reserved to the

respondents to initiate appropriate action in accordance with law.

16. Hence, the following:

ORDER

(i) The impugned show cause notice dated 11.04.2023 issued by respondent no.1 (vide Annexure-G to the writ petition) is hereby set aside insofar as it relates to the petitioner;

(ii) Consequently, respondent no.1 is directed to refund a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) to the petitioner within eight weeks from the date of receipt of a certified copy of this order;

(iii) Respondent no.1 is also directed to release the materials seized by respondent no.2 in favour of the petitioner within a period of eight weeks from the date of receipt of a copy of this order;

(iv) Liberty is reserved to respondent no.1 and such other proper Officers as contemplated under the Act, to proceed against the petitioner in accordance with law;

(v) The writ petition stands disposed of accordingly. Pending interlocutory applications, if any, stand disposed of.

Sd/-
(M.I.ARUN)
JUDGE

hkh.