

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 839 OF 2025

Smurti Waghdhare
daughter of Suhas Waghdhare,
residing at Room No. 61, 3rd Floor,
Laxmi Nivas/Minty House, 2nd
Panjrapol Lane, Charni Road, Mumbai

...Petitioner

Versus

1. Joint Director
Directorate General of GST Intelligence,
Mumbai Zonal Unit NTC House, 3rd floor,
15, N.M. Road, Ballard Estate, Mumbai

2. Senior Intelligence Officer
Directorate General of GST Intelligence,
Mumbai Zonal Unit NTC House, 3rd floor,
15, N.M. Road, Ballard Estate, Mumbai

3. Intelligence Officer
Directorate General of GST Intelligence,
Mumbai Zonal Unit NTC House, 3rd floor,
15, N.M. Road, Ballard Estate, Mumbai

...Respondents

Mr. Abhishek Rastogi a/w Pooja Rastogi, Meenal Songire, Aarya More for the
Petitioner.

Mr. Jitendra Mishra a/w Sangeeta Yadav, Rupesh Dubey & Ashutosh Mishra for
Respondents.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

RESERVED ON : 5th March 2026
PRONOUNCED ON : 10th March 2026

JUDGMENT (Per AARTI SATHE, J.):

1. Rule. By consent of the parties heard finally.

2. This Petition under Article 226 of the Constitution of India has been filed praying for the following substantive reliefs:-

“(a) quashing the Order of Seizure dated 28.06.2023 issued in Form GST INS-02 by Respondent No 3 seizing cash amounting to INR 60 Lakhs from Premises No 19 (Exhibit-D), and Order of Seizure dated 27.06.2023 issued in Form GST INS-02 by Respondent No 2 seizing cash amounting to INR 40 Lakhs from the residence of Petitioner's parents (Exhibit-F), and directing release of the cash to the Petitioner with interest; (b) directing the Respondents to deposit the seized cash totally amounting to INR 1 Crore in the registry of this Hon'ble Court, and directing the registry to deposit the same in an interest-bearing fixed deposit with a nationalized bank, pending disposal of this petition;

(c) directing Respondent No 1 to furnish a copy of Authorizations for Search issued in Form GST INS-01 in respect of searches conducted at the Petitioner's residence, Premises No 19 and residence of Petitioner's parents, pending disposal of this petition;

(d) granting ex-parte ad-interim reliefs in terms of prayer clauses (b) and (c) above, and”

3. The challenge in the present Petition is in respect of two orders of seizure dated 27th June 2023 and 28th June 2023 issued by Respondent Nos. 2 and 3 respectively (hereinafter referred to as “the impugned seizure orders”) *inter alia* seizing cash amounting to INR 1 crore from premises owned by the Petitioner, i.e., Office No 19, 1st Floor, Laxmi Nivas / Minty House, 2nd Panjrapol Lane, Charni Road, Mumbai, Maharashtra - 400 004 ("Premises No 19"), and the residence of Petitioner's parents.

4. Briefly the facts are as follows:-

(i) The Petitioner is a proprietor of M/s. Platinum International and registered

under Goods and Services Act (GST Act) bearing Registration Number GSTIN 27AASPW1736 D1ZC and *inter-alia* engaged in trading of ferrous and non-ferrous metals and scrap.

(ii) On 27th June 2023 and 28th June 2023, searches were conducted by Respondent Nos. 2 and 3 and their team on the basis of authorization issued by Respondent No. 1, at the following places which are owned by the Petitioner, the details of the which are as follows:-

“a. Petitioner's office (registered under GST as her "principal place of business"): Ground Floor, Office No. 1, Agakhan Building, 220/230, Kika Street, Mumbai, Maharashtra - 400 004 ("Kika Street Office");

b. Another premises owned by the Petitioner (no activities are conducted from this place, no entity maintains its place of business at this place): Office No 19, 1st Floor, Laxmi Nivas / Minty House, 2nd Panjrapol Lane, Charni Road, Mumbai, Maharashtra - 400 004 ("Premises No 19");

c. Petitioner's residence (premises owned by Petitioner's father, Mr. Suhas Waghdhare, a senior citizen): Room No. 61, 3rd Floor, Laxmi Nivas / Minty House, 2nd Panjrapol Lane, Charni Road, Mumbai, Maharashtra 400 004.

d. Residence of the Petitioner's parents, both of whom are senior citizens (premises owned by the Petitioner): B-1B, Ground floor, 88, Jitekarwadi (New), Dr. Babasaheb Jaykar Marg, Girgaon, Thakurdwar Road, Mumbai, Maharashtra - 400 002.”

(iii) Pursuant to the above searches conducted on 27th June 2023 and 28th June 2023, several items owned by the Petitioner were seized from Premises No. 19 and

residence of the Petitioner's parents by Respondent No. 2 and 3 and their team.

(iv) Similarly, search and seizure proceedings were conducted by Respondent Nos. 2 and 3 and their team and on the same date i.e. 27th June 2023 at the residence of one Mr. Hitesh Chheda, proprietor of M/s. Leo Ferromet situated at Ghatkopar West and also in the premises owned by Mr. Hitesh Chheda, situated in the same building as Premises No. 19, which is also owned by the Petitioner. It is the Petitioner's contention that though the Petitioner and Mr. Hitesh Chheda are friends, they are not related persons within the meaning of Central Goods and Services Tax Act, 2017 (CGST Act). Mr. Hitesh Chheda was arrested on 21st July 2023 under the provisions of 132(1) of the CGST Act and subsequently was released on bail vide order 5th September 2023 passed by the Additional Chief Metropolitan Magistrate, 19th Court Esplanade, Mumbai.

5. It is in the backdrop of these facts, the question which has fallen for consideration in the present proceedings is whether the seizure of cash of INR 1crore by the impugned seizure orders from the premises belonging to the Petitioner is justified in law and whether the Respondents had the power to seize the same under the provisions of the CGST Act.

6. With the assistance of Mr. Rastogi, Learned Counsel for the Petitioner and Mr. Mishra, Learned Counsel for the Respondents, we have perused the papers and the impugned seizure orders, and we proceed to decide the present petition.

7. Mr. Rastogi, Learned Counsel on behalf of the Petitioner has submitted that the seizure of cash by the Respondents is patently illegal and is not mandated by

any of the provisions as envisaged under the CGST Act. The submissions on behalf of the Petitioner can be summarized as follows: -

(i) It is submitted that cash does not fall within the ambit of goods, documents, books or things as mandated under Section 67(2) of the CGST Act, on the basis of which, the Respondent has sought to carry out the search and seizure operations at the premises of the Petitioner.

(ii) Further, it was also submitted that Section 67(2) of the CGST Act authorizes the proper officer to seize only those goods, documents, books or things, which may be useful or relevant to any proceedings and have been secreted at any place. Therefore, Section 67(2) of the Act does not envisage the seizure of the cash as has been done by the Respondents in the present case, inasmuch as cash is not something which a proper officer can seize under the provisions of Section 67(2) of the CGST Act.

(iii) It was next submitted that Section 67(2) of the Act also presupposes that seizure of only those items can be made which in the opinion of the proper officer shall be useful or relevant to any proceedings under the CGST Act. The second proviso to Section 67(2) of the CGST Act states that the seized item can be retained only for so long as may be necessary for their examination and for any inquiry or proceedings under the CGST Act. In the facts of the present case the Respondents have failed to justify how the seized cash would be useful or relevant, or necessary for any inquiry or proceedings and also failed to establish as to how they are necessary for any proceedings insofar as the Petitioner is concerned.

(iv) It was also submitted that the said cash which the department has sought to seize from the Petitioner's premises was primarily on the ground that one Mr. Hitesh Chheda, who happened to be the Petitioner's friend, was involved in fake billing to claim and avail fake Input Tax Credit (ITC). It is only on his statement that the Respondents have sought to seize the cash belonging to the Petitioner without establishing as to whether the said cash actually belongs to him or to the Petitioner.

(v) It was therefore submitted that such a seizure was completely unlawful and not warranted. It was further submitted that the impugned seizure orders did not make any reference to any incriminating documents/records which had compelled the Respondents to undertake search and seizure actions against the Petitioner, and further the impugned seizure orders did not record any "reasons to believe" to carry out the seizure proceedings.

(vi) It was submitted that the "reason to believe" forms the undisputed core of search proceedings as per 67(2) of the CGST Act and the same is conspicuously absent in the present case. It was also submitted that the seized items were not secreted at any place as per the mandate of Section 67(2) of the CGST Act, and also no receipt under Section 67(11) of the CGST Act had been issued to the Petitioner despite taking possession of the several items, including cash as described in the impugned seizure orders.

(vii) It was also submitted that the provisions of Section 67(7) of the CGST Act were not complied with and no notice in respect thereof was given within a period

of six months from the seizure of the goods, and hence the Respondents were obliged to return the cash to the person from whose possession the same was seized i.e. in the present case, the Petitioner.

(viii) During the course of hearing, learned Counsel for the Petitioner also drew our attention to the statement recorded of Mr. Hitesh Chheda, along with authorization of search dated 10th April 2024, wherein Mr. Hitesh Chheda has categorically admitted that the amount of INR 60 lakhs seized from the Petitioner's premises belongs to the Petitioner. The relevant portions of the statement are reproduced below: -

“On being asked regarding unaccounted cash of Rs 60 Lakhs that was seized from No.19, 1st Floor, Laxmi Niwas/Minty House. 2nd Panjrapole Lane, opp. Balkrishna Niwas, Charni Road, Mumbai-400004 in panchanama dated 27.06.2023. wherein it was stated that the said cash is related to my business transactions which was used for money rotation and is not related to GST proceeds and wherein it was further promised by me to provide the details of each and every cash amount within a week's time from 21.07.2023, which I haven't able to explain or submit, it is to state that that amount of money is not related to me or this business. As per further enquiry from our side, it was found that the said amount of Rs 60 Lakhs belongs to Ms Smruti Waghdhare.”

(ix) Further, the learned Counsel for the Petitioner also pointed out to the statement given by the Petitioner dated 10th April 2024, wherein the Petitioner deposed that the amount of INR 40 lakhs which was seized from her parental house also belonged to the Petitioner. The relevant portion of the statement is reproduced below:-

“On being asked regarding accounted cash of Rs 40 Lakhs that was seized from my parental home situated at, JITEKAR WADI,

GROUND FLOOR, OPP. VINAY HEALTH HOME in panchanama dated 27.06.2023, and other amount of Rs 60 Lakhs that was seized from office No.19. 1st Floor, Laxmi Niwas/Minty House, 2nd Panjrapole Lane, opp. Balkrishna Niwas, Chami Road, Mumbai-400004 in panchanama dated 27.06.2023, it is to state that in relation to Rs 40 Lakhs, the said amount belongs to my parents, and I have already filed one WRIT petition in Hon'ble High Court with regards to the same. In relation to Rs 60 lakhs, the said amount belongs to me only and as mentioned above I have already tiled one WRIT petition in Hon'ble High Court with regards to the same.”

(x) Learned Counsel further submitted that the Petitioner had kept the cash for the medical treatment of her parents, especially her mother, and hence the seizure of the said cash has caused grave prejudice to the Petitioner as her mother is undergoing medical treatment. Further, it was submitted on behalf of the Petitioner that cash/ Indian Currency is explicitly excluded from the definition of goods as it squarely falls within the definition of the term “money” as provided in sub-section 2 of Section 75 of the Act.

8. *Per contra*, learned Counsel for the Respondents submitted that the impugned seizure orders are justified in the facts of the present case, and also the seizure was made to unearth the alleged huge racket being operated by the Petitioner and Mr. Hitesh Chheda, who are friends, to claim fake ITC. He further submitted that the Petitioner in her statement recorded under Section 17 of the CGST Act on 10th April 2024 has categorically admitted that she had given the premises to Mr. Hitesh Chheda for his personal use and she did not have knowledge about the data, documents and goods which were kept in the said premises. Further he submitted that Mr. Chheda had voluntarily stated and

confirmed that he was involved in the nexus of availing fake ITC, wherein fake invoices were issued from the said premises without actual movement of goods. It was therefore his submission that the Petitioner had no locus to file the present petition. The learned Counsel for the Respondents also relied on the submissions made in the affidavit-in-reply dated 18th November 2024 filed by one Vikramjit Kaur, Senior Intelligence Officer working in the office of the Directorate General of GST Intelligence, Mumbai Zonal Unit. Relevant paragraphs of the same are reproduced below:-

“11. I further say that the incriminating evidences, mentioned above, revealed the involvement of one person namely Shri Hitesh Chheda, who was found at Office No.19, 1st Floor, Laxmi Niwas/Minty House, 2nd Panjrapole Lane, opp. Balkrishna Niwas, Charni Road, Mumbai-400004 along with the Petitioner, Ms Smruti Waghmare in the said nexus/syndicate. The concerned person, Shri Hitesh Chheda, who acted as the masterminds in the nexus, has categorically in his statements dated 27.06.2023, 28.06.2023 and 21.07.2023 admitted that many companies were used to be operated from the premises situated at Office No.19, 1st Floor, Laxmi Niwas/Minty House, 2nd Panjrapole Lane, opp. Balkrishna Niwas, Charni Road, Mumbai-400004. He further stated that:

a. He along with other associate used to carry out their respective category of work viz. gathering of KYC for opening of bank accounts and GST no., issuance of bogus invoice, where no actual supply has taken place, transfer of money through RTGS, accounting of passing of ITC.

b. that his role was to opening of fake bank accounts from where transactions used to take place and transferring of money through RTGS into these fake bank accounts. The banking transactions can be in relation to the business or otherwise. It is to mention that no actual supply related to GST has ever happened in these firms and only invoices were issued in respect of GST point of view and further only transactional entries were made for fraudulent rotation of money. All the firms as per his knowledge are fake and bogus and no invoices have been issued in relation to the business.

12. Also, statement of Ms Smruti Waghmare dated 10.04.2024, was recorded under section 70 of CGST Act 2017, wherein she inter-alia

stated that:

a) On being asked regarding reason for presence of various incriminating documents/data/goods/things related to the fictitious firms like GSTN login ID, passwords, data in laptops, stamps, name plates, cheque books etc that were all lying and found to be secreted in the premises owned by her which is situated at Office No.19, 1st Floor, Laxmi Niwas/Minty House, 2nd Panjrapole Lane, opp. Balkrishna Niwas, Charni Road, Mumbai-400004, she stated that she has given the said premises to her friend Shri Hitesh Chheda for his personal use and she don't have any knowledge regarding any of the documents/data/goods/things which were kept in the said premises.

18. With reference to para no. 13, I say that the contents thereof are denied. I further say that search proceedings were conducted vide Search Authorization having DIN 202306DWW00000818186 dated 26/06/2023 for (i) Office No.19, 1st Floor, Laxmi Niwas/Minty House, 2nd Panjrapole Lane, opp. Balkrishna Niwas, Charni Road, Mumbai-400004, and Search Authorization having DIN. 202306DWW0000000A341 dated 26/06/2023 for (ii) B-1B, Ground Floor, 88, JITEKAR WADI, GROUND FLOOR, OPP VINAY HEALTH, Girgaon, Mumbai-400002. Both the search authorizations were duly executed and Panachanams dated 28.06.2023 and 27.06.2023 respectively were drawn, wherein, premises at (i) was drawn in the presence of Petitioner and premises at (ii) was drawn in the presence of presence of parents of petitioner. Acknowledgement of receiving of both the Panchanamas were duly obtained by the concerned officers. Therefore, all the singular averments, allegations and submissions in the petition filed by the Petitioner are vehemently denied in to to.

19. With reference to para 14 of the petition, it is to say that approximately 155 bogus firms managed and operated by a nexus/syndicate operative from Office No.19, 1st Floor, Laxmi Niwas/Minty House, 2nd Panjrapole Lane, opp. Balkrishna Niwas, Charni Road, Mumbai-400004 and other related premises of the Petitioner i.e. B-1B, Ground Floor, 88, JITEKAR WADI, GROUND FLOOR, OPP. VINAY HEALTH, Girgaon, Mumbai- 400002. The investigation conducted against so far revealed that the said firms have availed and passed on the ITC amounting to Rs. 312.8 Crores on the strength of invoices received from various companies without actual receipt of goods or services. The offences committed by the said nexus have committed offences under CGST Act 2017, were being perpetually committed with full disregards to the statutory provisions and with a clear intention to defraud the Government of its due revenue. The offence is of very serious nature having huge revenue implication. The investigation is under progress.

20. With reference to para no. 15 to 19, the contents thereof are denied and the Respondent relies upon the submissions already made in the Affidavit in Reply in respect hereto

21. With reference to the Grounds in Petition, it is submitted that under Section 67 of the Act, the power of inspection, search, and seizure allows a proper officer not below the rank of Joint Commissioner, based on a search conducted under sub-section (2), to take action when there is reason to believe that any goods liable to confiscation, or any documents, books, or things useful or relevant to proceedings under this Act, are hidden in a certain place. The officer may authorize in writing another central tax officer to search and seize, or may conduct the search and seizure himself, for such goods, documents, books, or things.

22. In this context, cash may be considered as a "thing" within the meaning of the Act and thus subject to seizure. In Smt. Kanishka Matta vs. Union of India and others [2020] 120 taxmann.com 174, the Hon'ble Madhya Pradesh High Court observed in Paragraph 18 that the term "thing" can indeed include "money."

23. Therefore, cash may be subject to seizure under Section 67, particularly if it holds relevance to the proceedings under the Act. In the instant case, the cash was found to be secreted in a premises owned by Petitioner, who in her statement confirmed that she had given the premises to her friend Shri Hitesh Chheda for his personal use. Whereas Shri Hitesh Chheda has voluntarily stated and confirmed that he is involved in the said nexus of availing fake ITC wherein fake invoices were issued from the said premises without actual movement of goods. They both were unable to reveal the actual source of this money and in fact confirmed to be the said money as unaccounted and proceeds of passing of and avilment of fake ITC. Therefore, considering the grave nature of financial irregularities and violations of CGST act 2017 involving a nexus of amount of GST evasion in excess of Rupees 312.8 crores, cash under the category of "things" as mentioned in section 67 of CGST Act 2017, were seized under INS-02.

24. Further, unaccounted cash, when found during a search, should be subject to seizure like any other valuable asset suspected to be linked to tax evasion. Cash can be critical evidence in determining the scale of tax evasion and non-compliance.

25. With reference to the Grounds in Petition, Reg- SEARCH AND SEIZURE PROCEEDINGS ARE DEFECTIVE, ILLEGAL AND BAD IN LAW, the contents thereof are denied and the Respondents rely upon the submissions already above.

26. With reference to the Grounds in Petition, Reg- DIN NOT MENTIONED ON THE IMPUGNED SEIZURE ORDERS, having points "XX to BBB", it is denied. The search proceedings were conducted vide Search Authorization having DIN

202306DWW00000818186 dated 26/06/2023 for (i) Office No.19, 1st Floor, Laxmi Niwas/Minty House, 2nd Panjrapole Lane, opp. Balkrishna Niwas, Charni Road, Mumbai-400004, and Search Authorization having DIN 202306DWW0000000A341 dated 26/06/2023 for ii) B-1B, Ground Floor, 88, JITEKAR WADI, GROUND FLOOR, OPP. VINAY HEALTH, Girgaon, Mumbai-400002. Both the search authorizations were duly executed and Panachanams dated 28.06.2023 and 27.06.2023 respectively were drawn, wherein, premises at i) was drawn in the presence of Petitioner and premises at ii) was drawn in the presence of presence of parents of Petitioner. Acknowledgement of receiving of both the Panchnamas were duly obtained by the concerned officers.

29. I submit that the investigation in the matter is at critical singe. Prima facie it appears to be a deep-rooted conspiracy at the behest of the Petitioner, who is the acquaintance of one of the master minds of the same. The Petitioner is unjustly enriching by evading huge sums of Government revenue and also appears to have been indulging in various other unlawful activities. On one hand the Petitioner, to save herself from the offense committed under the CGST Act, has categorically stated that the premises (from where the cash of Rs. 60,00,000/- was seized) was given to her friend Shri Hiten Chheda for his personal use and she is not aware of anything kept there, whereas on the other hand, the Petitioner is claiming refund of unaccounted cash seized by the Respondents on reasonable believe that the same are ill gotten money from the evasion of Goods and Services Tax by fraudulent means.”

9. We have heard learned counsels for the parties, and we are of the considered view that in the facts of the present case, the action of the Respondents of seizing the cash found at the premises of the Petitioner by way of the impugned seizure orders is perverse, arbitrary and without the authority of law. The provisions of Section 67(2) of the CGST Act have not been fulfilled in the facts of the present case inasmuch as the very ingredients as mandated in the said Section have not been complied with by the Respondents. It will be beneficial to reproduce Section 67(2) of the CGST Act, and the same reads as follows:-

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

(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. On a plain reading of the aforesaid Section, it is clear that the seizure has to be of any goods or any documents or books or things which are liable for confiscation, and for which the proper officer not below the rank of Joint Commissioner, should have “reason to believe” that the same are useful or relevant to any proceedings under the CGST Act, and it is only on the satisfaction of this condition that the seizure could be made. In the facts of the present case, the Respondent-Department has given a go-by to the expression “reason to believe”, which forms the bedrock to initiate proceedings under Section 67(2) of the CGST Act to seize goods, documents, books or things. Respondent Nos. 2 and 3 have further not recorded any reasons to come to the conclusion that the cash found at the premises of the Petitioner was liable to be seized. In fact, the provisions of Section 67(2) do not mandate the seizure of any cash, and therefore there was no power under which the Respondents could seize the cash from the Petitioner’s

premises.

11. The concept of “reason to believe” has been interpreted by the Supreme Court in the context of income tax re-opening proceedings in the leading case of

ITO Vs. Lakhmani Meval Das¹ wherein the Supreme Court held as under:-

“7. It would appear from the perusal of the provisions reproduced above that two conditions have to be satisfied before an Income-tax Officer acquires jurisdiction to issue notice under Section 148 in respect of an assessment beyond the period of four years but within a period of eight years from the end of the relevant year, viz. (1) the Income-tax Officer must have reason to believe that income chargeable to tax has escaped assessment, and (2) he must have reason to believe that such income has escaped assessment by reason of the omission or failure on the part of the assessee (a) to make a return under Section 139 for the assessment year to the Income-tax Officer, or (b) to disclose fully and truly material facts necessary for his assessment for that year. Both these conditions must coexist in order to confer jurisdiction on the Income-tax Officer. It is also imperative for the Income-tax Officer to record his reasons before initiating proceedings as required by Section 148(2). Another requirement is that before notice is issued after the expiry of four years from the end of the relevant assessment years, the Commissioner should be satisfied on the reasons recorded by the Income-tax Officer that it is a fit case for the issue of such notice. We may add that the duty which is cast upon the assessee is to make a true and full disclosure of the primary fact at the time of the original assessment. Production before the Income-tax Officer of the account books or other evidence from which material evidence could with due diligence have been discovered by the Income-tax Officer will not necessarily amount to disclosure contemplated by law. The duty of the assessee in any case does not extend beyond making a true and full disclosure of primary facts. Once he has done that his duty ends. **It is for the Income-tax Officer to draw the correct inference from the primary facts. It is no responsibility of the assessee to advise the Income-tax Officer with regard to the inference which he should draw from the primary facts. If an Income-tax Officer draws an inference which appears subsequently to be erroneous, mere change of opinion with regard to that inference would not justify initiation of action for reopening assessment.**

8. The grounds or reasons which lead to the formation of the believe contemplated by Section 147(a) of the Act must have a material bearing on the question of escapement of income of the assessee from assessment because of his failure or omission to disclose fully and truly all material facts. Once there exist reasonable grounds for the Income-tax Officer to form the above believe, that would be sufficient to clothe him with jurisdiction to issue notice. Whether the grounds are adequate or not is not a matter for the court to investigate. The sufficiency of grounds which induce the Income-tax

1 1976 TMI 6471 SC

Officer to act is, therefore, not a justiciable issue. It is, of course, open to the assessee to contend that the Income-tax Officer did not hold the believe that there had been such non-disclosure. The existence of the believe can be challenged by the assessee but not the sufficiency of reasons for the believe. The expression "reason to believe" does not mean a purely subjective satisfaction on the part of the Income-tax Officer. The reason must be held in good faith. It cannot be merely a pretence. It is open to the court to examine whether the reasons for the formation of the believe have a rational connection with or a relevant bearing on the formation of the believe and are not extraneous or irrelevant for the purpose of the section. To this limited extent, the action of the Income-tax Officer in starting proceedings in respect of income escaping assessment is open to challenge in a court of law (see observations of this Court in the cases of *Calcutta Discount Co. Ltd. v. Income-tax Officer* and *S. Narayanappa v. Income-tax Officer* while dealing with corresponding provisions of the Indian Income-tax Act, 1922).

11. As stated earlier, the reasons for the formation of the believe must have a rational connection with or relevant bearing on the formation of the believe. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his believe that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income-tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, however vague and indefinite or distant, remote and farfetched, which would warrant the formation of the believe relating to escapement of the income of the assessee from assessment. The fact that the words "definite information" which were there in Section 34 of the Act of 1922 at one time before its amendment in 1948 are not there in Section 147 of the Act of 1961 would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, farfetched and remote. The reason for the formation of the believe must be held in good faith and should not be a mere pretence.

12. The powers of the Income-tax Officer to reopen assessment though wide are not plenary. The words of the statute are "reason to believe" and not "reason to suspect". The reopening of the assessment after the lapse of many years is a serious matter. The Act, no doubt, contemplates the reopening of the assessment if grounds exist for believing that income of the assessee has escaped assessment. The underlying reason for that is that instances of concealed income or other income escaping assessment in a large number of cases come to the notice of the income-tax authorities after the assessment has been completed. The provisions of the Act in this respect depart from the normal rule that there should be, subject to right of appeal and revision, finality about orders made in judicial and quasi-judicial proceedings. It is, therefore, essential that before such action is taken the requirements of the law should be satisfied. The live link or close nexus which should be there

between the material before the Income-tax Officer in the present case and the believe which he was to form regarding the escapement of the income of the assessee from assessment because of the latter's failure or omission to disclose fully and truly all material facts was missing in the case. In any event, too tenuous to provide a legally sound basis for reopening the assessment. The majority of the learned Judges in the High Court, in our opinion, were not in error in holding that the said material could not have led to the formation of the believe that the income of the assessee respondent had escaped assessment because of his failure or omission to disclose fully and truly all material facts. We would, therefore, uphold the view of the majority and dismiss the appeal with costs.”

(emphasis applied)

12. Therefore, in the facts of the present case, when this very important condition of “reason to believe” has not been fulfilled by the Respondents, we are of the firm view that the seizure of cash is completely illegal and not justified in law.

13. We are further in agreement with the submission made on behalf of the Petitioner that the provisions of Section 67(7) of the CGST Act have also not been followed inasmuch as no notice, in respect of goods which are seized of Section 67(2) of the CGST Act, had been issued within a period of six months of the seizure of the goods, and therefore the goods are liable to be returned to the Petitioner, from whose possession the same were seized. For ease of reference, it will be beneficial to reproduce the provisions of Section 67(7) of the CGST Act:-

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

(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.”

Since a notice under Section 67(7) of the CGST Act, also has not been issued to

the Petitioner, the Respondents are liable to release the cash back to the Petitioner. Even otherwise, as submitted by learned Counsel Mr. Rastogi on behalf of the Petitioner, the Petitioner is a care-giver of her elderly parents, from whose premises the cash was seized, and it is the Petitioner's contention that her mother is undergoing treatment for heart ailment for which she is in urgent need of cash. Learned Counsel for the Petitioner has submitted the documents of Saifee Hospital, which shows the medical condition of the mother of the Petitioner.

14. Our view regarding the perversity of the action of the Respondents in seizing the Petitioner's cash further gets fortified by the statement recorded of Mr. Hitesh Chheda and the Petitioner, which is reproduced above in paragraphs 7(viii) and 7(ix), wherein it has been established that the amount of INR 1 crore which has been seized from premises of the Petitioner and her parental house, belongs to the Petitioner. The Respondents have not brought on record any document or controverted the aforesaid fact challenging the ownership of the cash of the Petitioner.

15. During the course of hearing, when a query was put to learned Counsel appearing on behalf of the Respondents Mr. Mishra as to the whereabouts of the cash seized from the Petitioner's premises, to our utter shock and dismay it was submitted that the said cash has been handed over to the Income Tax Department for further proceedings, and relevant notices under Section 131 of the Income-Tax Act, 1961 had been issued to Mr. Hitesh Chheda and the Petitioner. We are rather surprised and completely at pains to understand as to from where the Respondents

have sourced the power under the CGST Act to handover the cash to the Income Tax Department for further proceedings.

16. Thus, looked at from any angle, we are of the considered view that the impugned seizure orders and the consequent seizure of the cash by the Respondents is without any authority of law and could have not been made under any of the provisions of the CGST Act. We therefore deem it appropriate to pass the following orders which will meet the ends of justice:

ORDER

- a. Impugned seizure order dated 28th June 2023 issued in Form GST INS-02 by Respondent No. 3 seizing cash amounting to INR 60 Lakhs and impugned order of seizure dated 27th June 2023 issued in Form GST INS-02 by Respondent No. 2 seizing cash amounting to INR 40 Lakhs, is hereby quashed and set aside.
- b. Respondent Nos. 2 and 3 to forthwith release the aforesaid amounts and pay the same directly to the Petitioner in the bank account as provided by her to the Respondents ,along with the applicable interest within a period of two weeks from the date this order is made available to the Respondents by the Petitioner.
- c. Petition is disposed of in the above terms. No costs. We further clarify that our findings in the present Petition are not a reflection on any income tax proceedings which are pending or have been initiated against the Petitioner.
- d. Rule made absolute in the aforesaid terms.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)