Rajasthan High Court
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 2128/2025

CNR: RJHC020107092025 | URN: CW / 5808U / 2025

1. Bhagwan Tirthani S/o Sh. Kishan Chand Tirthani, Aged About 51 Years, Resident Of 73-C, Ground Floor Jhule Lal Colony, Near Shiv Mandir, Ajay Nagar, Ajmer- 305001
2. Lalit Tirthani S/o Sh. Kishan Chand Tirthani, Aged About 50 Years, Resident Of 73-C, First Floor, Jhule Lal Colony, Near Shiv Mandir, Ajay Nagar, Ajmer-305001
3. Manish Hazari S/o Sh. Inder Hazari, Aged About 48 Years, Resident Of 1946/11, Hazari Bhawan, Nehru Nagar, Road, Ajay Nagar, Ajmer, Rajasthan - 305001
4. Puran Mal Lakhani S/o Sh. Dhalomal Lakhani, Aged About 71 Years, Years Resident Of 253/22, Khari Kui, Diggi Bazar, Ajmer, Rajasthan - 305001

----Petitioners

Versus

1. Principal Commissioner, General Goods And Service Tax Commissionerate, Jaipur, Having Address At New Central Revenue Building Statue Circle C Scheme Jaipur - 302005
2. Assistant Commissioner, Anti-Evasion, Central Goods And Service Tax, Jaipur
3. Commissioner (Appeals), Central Goods And Service Tax Department, New Central Revenue Building, Statue Circle, C Scheme, Jaipur - 302005
4. Union Of India, Through The Secretary, Ministry Of Finance, Department Of Revenue, New Delhi - 110 001
5. State Of Rajasthan, Through The Secretary Finance, Ministry Of Finance, Secretariat, Jaipur

----Respondents

For Petitioner(s) : Mr. Rahul Lakhwani with
Mr. Mihir Jhanwar
Mr. Prateek Kedawat through VC

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For Respondent(s) : Mr. C.S. Sinha with
Mr. Dev Yadav
Ms. Chelsi Agarwal, AAAG with
Mr. Kuldeep Singh Rathore, AAAG for
Ms. Mahi Yadav, AAG

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HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR
Order

rtable

14/09/2026
Per: Arun Monga, J.

1. The petitioners assail the Order-in-Original dated 11.06.2024 passed by the Assistant Commissioner, Anti-Evasion, Central Goods and Services Tax, Jaipur, insofar as it declines release of the confiscated cash amounting to Rs.47,45,000/- seized from the residential premises of petitioner No.1 during search proceedings conducted on 22.11.2022. The petitioners further seek a direction for refund of the said amount together with applicable interest and compensation, contending that the seizure of cash under Section 67(2) of the Central Goods and Services Tax Act, 2017 ("the CGST Act") is without authority of law.

2. The brief facts necessary for adjudication of the present writ petition are that, on 22.11.2022, officers of the Central Goods and Services Tax Department conducted searches at the business premises of petitioner No.1 and at the residential premises occupied by petitioner Nos.1 and 2. During the search, cash amounting to Rs.47,45,000/- was seized from the residential premises. The search proceedings were undertaken under Section 67(2) of the CGST Act.

2.1 The department officers also seized 2,33,300 cigarettes of Indian and foreign brands, stated to be valued at Rs.18,67,690/-, from the shop and godown premises connected with petitioner No.1. The case of the petitioners is that the seized cigarettes did not belong to petitioner

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No.1, but had been kept at the premises by representatives or agents of various cigarette companies for promotional activity and subsequent sale. It is further pleaded that though the search authorisation concerned the ground-floor premises of petitioner No.1, the first-floor residential premises of petitioner No.2 were also searched and cash found therein was seized without any separate authorisation.

2.2 The petitioners assert that the amount of Rs.47,45,000/- did not exclusively belong to petitioner No.1. According to them, Rs.1,45,000/- represented the accumulated savings of petitioner No.1 and his family; Rs.10,00,000/- belonged to petitioner No.2; Rs.21,00,000/- belonged to petitioner No.3; and Rs.15,00,000/- belonged to petitioner No.4. Petitioner Nos.2 to 4 are stated to have furnished affidavits and representations asserting ownership of their respective amounts and explaining the source thereof. The explanations so furnished, however, did not find favour with the adjudicating authority.

2.3 Thereafter, the Assistant Commissioner passed the Order-in-Original dated 11.06.2024. By the said order, the seized cigarettes and Indian currency were held liable to confiscation; penalties were imposed under the relevant provisions of the CGST Act; and directions were issued concerning disposal or destruction of certain seized cigarette stocks. The adjudicating authority recorded a finding that the cash constituted the sale proceeds of unaccounted cigarettes allegedly sold without issuance of tax invoices.

2.4 Petitioner No.1 has preferred an appeal in Form GST APL-01 before the appellate authority under Section 107 of the CGST Act, which is stated to be pending.

2.5 The present writ petition, however, is confined to the legality of seizure and retention of the cash.

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3. Learned counsel for the petitioners submits that the seizure of Rs.47,45,000/- is ex facie without jurisdiction. It is contended that the power under Section 67(2) of the CGST Act is circumscribed and can be exercised only in respect of: (i) goods liable to confiscation; or (ii) documents, books or things which, in the opinion of the proper officer, may be useful for or relevant to proceedings under the Act. Cash cannot be brought within either category.

3.1 It is urged that the expression "goods" is specifically defined under Section 2(52) of the CGST Act to mean every kind of movable property other than money and securities. "Money", in turn, is separately defined under Section 2(75) of the CGST Act. Thus, submits learned counsel, the legislature has consciously treated "money" as conceptually distinct from "goods". Once money has been expressly excluded from the definition of goods, it cannot be seized as goods liable to confiscation by invoking Section 67(2).

3.2 Learned counsel further submits that cash also cannot be read into the residual phrase "documents or books or things" occurring in Section 67(2). It is contended that the words "document", "books" and "things" must be construed in the context in which they occur. The latter category pertains to articles that may be useful or relevant as evidence in an inquiry or proceeding; it cannot be expansively interpreted to include currency merely because money is a tangible movable object.

3.3 It is submitted that the legislative treatment of cash under cognate taxing statutes makes the position clear. The Customs Act, 1962 expressly includes currency in the definition of "goods" under Section 2(22). Likewise, Section 132 of the Income-tax Act, 1961 specifically authorises seizure of "books of account, other documents,

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money, bullion, jewellery or other valuable article or thing". The separate express reference to "money" in the Income-tax Act, it is urged, shows that where Parliament intended to confer a power to seize cash, it did so in clear and unambiguous terms.

3.4 Learned counsel submits that the absence of a corresponding reference to "money" or "currency" in Section 67 of the CGST Act is deliberate and legally significant. The Court, it is urged, cannot supply such an omission by interpreting the word "things" so broadly as to nullify the express exclusion of money from the definition of goods.

3.5 Learned counsel also submits that the jurisdictional requirement of "reasons to believe" was not satisfied. According to the petitioners, no contemporaneous material has been shown to establish a live nexus between the seized currency and any taxable supply, much less an unaccounted supply of cigarettes. The subsequent adjudicatory conclusion that the cash represented proceeds of clandestine sales cannot retrospectively validate the initial act of seizure.

3.6 It is further contended that the petitioners had furnished affidavits, explanations and material concerning ownership and source of the cash. The same were rejected largely on the basis of conjecture and without any independent inquiry into the claims of petitioner Nos.2 to 4. It is urged that the fact that cash was found at the residence of petitioner No.1 cannot, by itself, establish that the entire amount represented his unaccounted business receipts.

3.7 Learned counsel lastly submits that retention and confiscation of cash without a specific statutory source of power violate Article 265 of the Constitution of India. It is contended that the State may levy and collect tax only by authority of law and, for the same reason, may

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deprive a person of money only under a power expressly conferred by statute.

4. *Per contra,* learned counsel appearing for the respondents raises a preliminary objection as to maintainability of the writ petition. It is submitted that petitioner No.1 has already availed the statutory appellate remedy under Section 107 of the CGST Act and that a further remedy is available under Section 112 thereof. In such circumstances, it is urged that the extraordinary writ jurisdiction of this Court ought not to be exercised.

4.1 On merits, learned counsel submits that the impugned order is based upon material gathered during the course of search and investigation. The seizure of a substantial quantity of unaccounted cigarettes, the statements made during the search, the alleged absence of GST registration despite taxable turnover, and the WhatsApp communications recovered during investigation collectively establish that petitioner No.1 was engaged in unaccounted purchase and sale of cigarettes.

4.2 It is submitted that the claim regarding ownership of the cash was an afterthought. The respondents contend that, at the time of search, petitioner No.1 had admitted that Rs.37,45,000/- belonged to him and had undertaken to produce supporting documents. The claim that only Rs.1,45,000/- belonged to him and that the remaining amount belonged to petitioner Nos.2 to 4 was raised subsequently. According to the respondents, the explanations tendered by the alleged owners were unsupported by satisfactory documentary evidence establishing the source, financial capacity or bona fide custody of the amounts.

4.3 Learned counsel for the respondents submits that the impugned order records detailed reasons for treating the cash as proceeds of

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unaccounted sale of cigarettes. It is argued that, once the departmental authorities formed a reasoned view that the cash constituted proceeds arising from transactions conducted in contravention of the CGST Act, the cash was liable to be dealt with under the confiscatory framework of Section 130 of the CGST Act.

4.4 Reliance is placed upon the judgment of the Division Bench of the Madhya Pradesh High Court in **Smt. Kanishka Matta v. Union of India and Others**[1]. Learned counsel submits that the statutory expression "things" used in Section 67(2) is broad enough to include cash where such cash is relevant to the proceedings and is found to be the sale proceeds of goods dealt with in violation of the Act.

5. We have heard learned counsel for the parties and perused the record.

6. Before examining the rival submissions, it would be useful to notice the material findings recorded by the adjudicating authority in the impugned Order-in-Original dated 11.06.2024. The relevant portions thereof are reproduced below:

> *"26.3 As regards seized Indian currency of Rs.47,45,000/- Sh. Bhagwan Tirthani has contended that out of the total seized cash only Rs.1,45,000/- belong to him, rest other amounts did not pertain to him rather same belongs to other persons who had kept their money with him for their own reasons. Further, bifurcation of the amount of Rs.47,45,000/- informed as under:-*
>
> *(a) Mr. Lalit Tirthani — Rs.10,00,000/-*
>
> *(b) Mr. Manish Hazari — Rs.21,00,000/-*
>
> *(c) Mr. Puran Mal — Rs.15,00,000/-*
>
> *(d) Accumulated savings of him and his family — Rs.1,45,000/-*
>
> *(xxxx….xxxx….xxxx)*
>
> *28.2 I accordingly find that Sh. Bhagwan Tirthani has not obtained GST registration despite having liable to seek registration under GST and engaged in sale & purchase of Cigarettes without accompanying any legal invoice, without assessing to tax, without payment of tax and all the transactions are made only through cash purchase and sale without maintaining true account of stock. Thus, contravening the provisions of section 22, 31, 35, 38 & 59 of the CGST Act, 2017 and Rule 56 & 57 of the CGST Rules, 2017 and corresponding provision of RGST act, 2017 is established in the case. I find that the Sh. Tirthani failed to provide any legal documents for possession ofseized*

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Cigarettes & satisfactory reply in respect of seized Indian currency of Rs.47,45,000/- which was generated on account of sale of unaccounted Cigarettes.

28.3 I thus hold that the unaccounted 2,33,300 nos. of Cigarettes valued at Rs.18,67,690/- ... and Indian currency of Rs.47,45,000/-, which was generated on account of clandestine sale of unaccounted Cigarettes and seized from his residence ... are liable for confiscation under section 130(1) of CGST Act, 2017 / Rajasthan GST Act, 2017 read with rule 139 of the CGST Rules, 2017 / rule 139 of Rajasthan GST Rules, 2017.

(xxxx….xxxx….xxxx)

28.5 ... cash of Rs.47,45,000/- was seized being sale proceed of Cigarettes cleared without accounting for in the records and without cover of legal tax invoice as required under GST provisions."

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6.1 Section 130(1) of the CGST Act, on which the adjudicating authority has relied, reads as under:

"130. Confiscation of goods or conveyances and levy of penalty.—

(1) Notwithstanding anything contained in this Act, if any person—

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122."

7. The narrow question which falls for consideration is whether the statutory power under Section 67(2) of the CGST Act extends to seizure of currency found during a search, merely because the departmental authorities suspect, or subsequently conclude, that such currency represents the proceeds of unaccounted taxable supplies. In other words, the specific issue primarily before us is whether "money" is expressly excluded from the definition of "goods" under the CGST Act and whether Section 67(2) authorises seizure of cash.

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8. Before we proceed further, at the outset, the objection relating to the availability of an alternative remedy deserves to be dealt with. It is true that the petitioners have a statutory remedy of appeal against the Order-in-Original dated 11.06.2024. However, the principal challenge raised in the present proceedings goes to the root of the jurisdiction of the departmental officers to seize and retain cash under Section 67(2) of the CGST Act. The issue is one of statutory interpretation and concerns the existence of power, rather than the correctness of a factual conclusion alone. The availability of an alternate remedy does not bar exercise of writ jurisdiction where the impugned action is alleged to be without jurisdiction or in breach of fundamental principles governing exercise of statutory power.

9. Having said as above, let us now also see relevant statutory provision applicable on the merits of the case in hand. Relevant of Section 67 of the CGST Act reads as follows:-

> *"67. Power of inspection, search and seizure.—*
>
> *(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*

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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.

(xxxx….xxxx….xxxx)

(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.

(xxxx….xxxx….xxxx)

(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."

10. A plain reading of the provision demonstrates that the power of seizure is not general or unqualified. It operates in respect of two distinct categories viz. :-

(a) First, "goods liable to confiscation";

and

(b) Secondly, "documents or books or things" which, in the opinion of the proper officer, are useful for or relevant to proceedings under the Act.

The first category does not admit of any ambiguity. Under Section 2(52) of the CGST Act, "goods" means every kind of movable property other than money and securities. The exclusion of "money" is express. The

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currency seized from the petitioners, therefore, cannot be regarded as "goods" for purposes of the CGST Act, and consequently cannot be treated as "goods liable to confiscation" under the first limb of Section 67(2).

10.1 Section 2(52) of the CGST Act reads as under.

> *"2. Definitions.—*
>
> *In this Act, unless the context otherwise requires,—*
>
> *(xxxx….xxxx….xxxx)*
>
> *(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;"*

10.2 The definitions of "consideration", "money" and "securities" in Section 2 of the CGST Act read as under:

> *"2. Definitions.—In this Act, unless the context otherwise requires,—*
>
> *(xxxx….xxxx….xxxx)*
>
> *(31) "consideration" in relation to the supply of goods or services or both includes—*
>
> *(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*
>
> *(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:*
>
> *Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;*
>
> *(xxxx….xxxx….xxxx)*
>
> *(75) "money" means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;*
>
> *(xxxx….xxxx….xxxx)*
>
> *(101) "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;"*

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11. It is important that Section 67(2) does not merely use the expression "movable property", "property", or "assets". Parliament has deliberately employed the defined expression "goods". Where a statute provides a specific definition for a word used in its substantive provisions, that definition ordinarily governs unless the context requires otherwise. No contextual circumstance has been shown which would warrant disregarding the express exclusion of money from the definition of "goods".

12. The respondents seek to justify the seizure by placing cash within the expression "documents or books or things". We are unable to accept such a construction.

13. The words "documents", "books" and "things" in Section 67(2) must be understood with reference to their statutory setting. The associated words "documents" and "books" are inherently evidentiary in character. The expression "things" following those words must therefore be read *ejusdem generis*, so as to include other articles that may serve as material or evidence in an inquiry under the Act. It cannot be construed as an unlimited residuary expression enabling seizure of every movable article found during search proceedings.

13.1 Section 67(2) itself reinforces this conclusion. The second proviso permits retention of "documents or books or things" only for so long as may be necessary for their examination and for any inquiry or proceeding under the Act. The purpose of seizure under this limb is thus evidentiary and investigative. Cash, however, is not ordinarily seized for "examination" in the same sense as books of account, electronic devices, records, invoices, ledgers, documents, or other articles that may disclose transactions and facilitate an inquiry. Currency may be an object capable of evidencing possession, but that consideration alone

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cannot convert it into a "thing" liable to seizure under a fiscal statute that has consciously excluded money from the expression "goods".

14. The statutory scheme, when viewed as a whole, points to the same conclusion. The CGST Act contains a specific definition of "money" under Section 2(75). It also separately defines "consideration" under Section 2(31), "goods" under Section 2(52), and "securities" under Section 2(101). The legislature was thus fully conscious of the legal character of money and of the distinction between money, goods, and other forms of property. Yet, while enacting Section 67, it did not authorise seizure of "money", "cash", "currency", "sale proceeds", or "valuable articles".

14.1 The aforesaid omission assumes significance when the CGST Act is contrasted with statutes in which Parliament has expressly authorised the seizure of cash. Section 132(1)(iii) of the Income-tax Act, 1961 authorises seizure of "books of account, other documents, money, bullion, jewellery or other valuable article or thing". Similarly, currency is expressly brought within the definition of "goods" under Section 2(22) of the Customs Act, 1962. These provisions demonstrate that Parliament knows how to confer an express power to seize money where it intends to do so.

14.2 Section 132(1) of the Income-tax Act, 1961, as it stood on the date of the search, reads in the relevant part as under.

> *"132. Search and seizure.—(1)* * * *
>
> *(xxxx….xxxx….xxxx)*
>
> *(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),*
>
> *(xxxx….xxxx….xxxx)*

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(i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;

(xxxx….xxxx….xxxx)

(iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search:

Provided that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business;"

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14.3 Section 2(22) of the Customs Act, 1962 reads as under.

"2. Definitions.—In this Act, unless the context otherwise requires,—

(xxxx….xxxx….xxxx)

(22) "goods" includes—

(a) vessels, aircrafts and vehicles;

(b) stores;

(c) baggage;

(d) currency and negotiable instruments; and

(e) any other kind of movable property;"

15. In contrast, Section 67(2) of the CGST Act does not use any expression comparable to "money", "currency", "cash", "sale proceeds", or "valuable article". To hold that "things" includes currency notwithstanding this deliberate legislative arrangement would, in effect, add words to the statute. Such an interpretation is impermissible, particularly when the power asserted is a coercive power authorising deprivation of possession of money.

16. Moreover, the distinction between a power to investigate an alleged tax contravention and a power to seize cash must also be kept in mind. The GST authorities are not rendered powerless merely because Section 67(2) does not authorise seizure of cash. The Act contains extensive provisions enabling assessment, determination and recovery of tax, interest and penalty. It also empowers investigation, summons, production of documents, attachment in appropriate cases, and adjudication of alleged tax liability.

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17. However, the existence of a suspected tax liability, or even a prima facie case of tax evasion, cannot enlarge the scope of a power of seizure beyond the limits enacted by Parliament.

18. The stand taken by respondents that the seized amount represents sale proceeds of unaccounted cigarettes does not alter the position. Even assuming that the departmental authorities possess material to support such an allegation, the question remains whether cash representing alleged sale proceeds can be seized under Section 67(2). The source or character attributed to the cash may be relevant to assessment, penalty, recovery, or proceedings under any other validly invoked statutory provision. It cannot, however, create a power of seizure where the statute does not confer one.

19. The validity of a seizure must be tested with reference to the power available on the date when the seizure was effected. A subsequent adjudicatory finding cannot retrospectively cure a foundational absence of jurisdiction. The departmental officers must be able to point to a statutory provision authorising the seizure of the particular subject matter at the time of search. Where such power is absent, the seizure cannot be sustained merely because investigation later furnishes circumstances that may give rise to tax consequences.

20. We also find that the jurisdictional condition of "reasons to believe" under Section 67(2) is not an empty formality. The expression requires a bona fide belief based on objective material having a rational nexus with the action proposed. It is not synonymous with a mere suspicion. The satisfaction must relate to the statutory conditions contemplated by Section 67(2), namely that goods liable to confiscation or documents, books or things useful or relevant to proceedings are secreted at a particular place.

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21. In the present case, the foundation of the impugned action is that the cash represented proceeds of clandestine sales. However, neither the allegation of unaccounted business activity nor the seizure of cigarettes can, by itself, overcome the jurisdictional limitation that money is neither "goods" under the CGST Act nor expressly included in the category of articles capable of seizure under Section 67(2). The power to seize cannot be inferred from the perceived necessity to secure a possible future demand.

22. The Bombay High Court, in **Smurti Waghdhare v. Joint Director, Directorate General of GST Intelligence**[2], has taken the view that seizure of cash under Section 67(2) is without authority of law, particularly where the statutory requirement of "reasons to believe" is not fulfilled and cash is not shown to be subject to seizure under the Act. Bombay High Court observed that Section 67(2) does not mandate seizure of cash and that statutory power cannot be assumed in the absence of a clear legislative provision. The relevant paragraphs read as under:

> *(xxxx….xxxx….xxxx)*
>
> *"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. <u>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.</u>*
>
> *(xxxx….xxxx….xxxx)*
>
> *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*

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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:

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 INS02 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."

(Emphasis supplied)

23. We are in respectful agreement with the above view. However, quite apart from the reasoning adopted therein, we rest our opinion and conclusion independently upon the following statutory considerations:-

(i) Money is expressly excluded from the definition of "goods" under Section 2(52) of the CGST Act.

(ii) Section 67(2) authorises seizure of goods liable to confiscation and of documents, books or things useful or relevant to proceedings, but does not mention money, cash, currency, sale proceeds or valuable articles.

(iii) The expression "things" must take colour from the associated expressions "documents" and "books" and cannot be interpreted as a general power to seize any movable asset.

(iv) The second proviso to Section 67(2), by permitting retention of documents, books or things only for examination and inquiry,

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confirms the evidentiary character of the latter part of the provision.

(v) Other enactments, including the Income-tax Act and Customs Act, specifically provide for seizure of money or currency. The omission of a corresponding power in the CGST Act cannot be judicially supplied.

(vi) The alleged nexus of the cash with unaccounted supplies may be relevant to the ultimate determination of tax liability, penalty or recovery, but does not itself authorise seizure of cash under Section 67(2).

24. We are conscious of the contrary view taken by Madhya Pradesh High Court in its judgment rendered in **Kanishka Matta (*supra*).** Madhya Pradesh High Court's view is stated to be contrary to that taken by the Delhi, Kerala and Bombay High Courts.

25. Prior to Bombay, even the Delhi High Court has also taken similar view in **Deepak Khandelwal v. Commissioner of CGST, Delhi West and Another**[3] that with much respect to the Hon'ble Court and its opinion, we are unable to persuade ourselves to adopt the said view. As noted above, the power of search and seizure are drastic powers and are not required to be construed liberally. Further, we find that the legislative intent of permitting seizure of books or documents or things in terms of Sub-section (2) of Section 67 of the Act is crystal clear and it does not permit seizure of currency or valuable assets, simply, on the ground that the same represent unaccounted wealth. The Delhi Division Bench, just as we are also of the same mind, also expressly declined to follow **Kanishka Matta (*supra*)**. The relevant paragraphs thereof read as under:-

(xxxx….xxxx….xxxx)

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"57. Mr. Harpreet Singh has placed reliance on the decision of the Madhya Pradesh High Court in Kanishka Matta v. Union of India & Ors. (supra). In that case, the Division Bench at Indore had rejected the prayer for release of ₹66,43,130/- that were seized from the premises of the petitioner. The Court held that the word 'things' as appearing in Sub-section (2) of Section 67 of the Act is required to be given wide meaning as per Black's Law Dictionary. The Court also referred to Wharton's Law and had noted that the word 'thing' is defined to include 'money'. In addition, the Court had also referred to a decision of the Supreme Court referring to the Heydon's Rule, and concluded that money was included in the word 'things'. With much respect to the Hon'ble Court and its opinion, we are unable to persuade ourselves to adopt the said view. As noted above, the power of search and seizure are drastic powers and are not required to be construed liberally. Further, we find that the legislative intent of permitting seizure of books or documents or things in terms of Sub-section (2) of Section 67 of the Act is crystal clear and it does not permit seizure of currency or valuable assets, simply, on the ground that the same represent unaccounted wealth. The mischief rule or the Heydon's rule (propounded in the year 1584 in Heydon's case: 76 ER 637) requires a statute to be interpreted in the light of its purpose. The purpose of the Act is not to proceed against unaccounted wealth. The provision of Section 67 of the Act is also not to seize assets for recovering tax. Thus, applying the principle of purposive interpretation, the power under Section 67 of the Act cannot be read to extend to enable seizure of assets on the ground that the same are not accounted for."

(Emphasis is ours)

25.1 Now let us also see, the relevant paragraphs of **Kanishka Matta (*supra*),** which read as under:

"7. It has been stated that the documents and cash were seized in terms of Section 67(2) of the CGST Act, 2017 and the Order of Seizure in Form GST INS-02 dated 30/05/2020 was issued. It has also been stated that Shri Sanjay Matta, the husband of the petitioner, made a voluntary statement stating categorically that the said cash of Rs.66,43,130/- was the sale proceeds of the illegally sold Pan Masala without payment of GST.

9. A rejoinder has been filed in the matter and the stand of the petitioner is that by no stretch of imagination Section 67(2) of the GST Act, 2017 empowers the respondents to seize the cash and later on the husband of the petitioner Shri Sanjay Matta has retracted the statement vide affidavit dated 07/06/2020 and in light of his affidavit dated 07/06/2020 the respondents should release the cash forthwith.

13. Goods comprising of Pan Masala, Tobacco, Mouth Freshener, Confectionery, etc. valued at Rs.2.59 Crores were seized under Section 67(2) of the CGST Act read with Section 129 of the CGST Act and Section 130 of CGST Act from six godowns operated by Shri Sanjay Matta and his brother Shri Sandeep Matta as no bills / invoices could be produced by them. Unaccounted cash of Rs.66,43,130/- was also seized from the residential premises of Shri Sanjay Matta.

14. The case diary also reveals that seizure was done under Section 67(2) of the CGST Act, 2017 under a reasonable belief that the aforesaid are the proceeds of the illicit supply of goods namely Tobacco and Pan Masala and would be useful for further investigation. Panchnama dated 30/05/2020, 31/05/202 and

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05/06/2020 were also brought to the notice of this Court. The case diary also reveals that Shri Sanjay Mattain his statement before the officers have stated categorically that the value of the goods sold without any bills and invoices during the period April, 2019 to May,2020 would be approximately 40.11 Crores in cash and the GST on the said clandestine clearance works out to Rs.18.77 Crores.

18. The core issue before this Court is that whether expression "things" covers within its meaning the cash or not. In the considered opinion of this Court, the CGST Act, 2017 has to be seen as a whole and the definition clauses are the keys to unlock the intent and purpose of the various sections and expressions used therein, where the said provisions are put to implementation. Section 2(17) "business" and Section 2(31) defines "consideration". In the considered opinion of this Court a conjoint reading of Section 2(17), 2(31), 2(75) and 67(2) makes it clear that money can also be seized by authorized officer.

19. The word "things" appears in Section 67(2) of the CGST Act, 2017 is to be given wide meaning and as per Black's Law Dictionary, 10th Edition, any subject matter of ownership within the spear of proprietary or valuable right, would come under the definition of " thing" (page No.1707). Similarly, Wharton's Law Lexicon at page No.1869 and 1870, the word "thing" has been defined and it includes "money". It is a cardinal principle of interpretation of statute that unreasonable and inconvenient results are to be avoided, artificially and anomaly to be avoided and most importantly a statute is to be given interpretation which suppresses the mischief and advances the remedy (Interpretation of statute by Maxwel , 12th Edition, page No.199 to 205). The same preposition of law is propounded in Craies on Statute Law, 7th Edition, page No.94).

20. (xxxx….xxxx….xxxx) Therefore, keeping in view the aforesaid interpretation of the word "thing" money has to be included and it cannot be excluded as prayed by the petitioner from Section 67(2). The present case is at the stage of search and seizure. A search has been carried out and proceedings are going on.

22. Much has been argued by learned counsel for the petitioner in respect of "confessional statements" and the fact that the husband of the petitioner has retracted at a later stage. In the case of Surjeet Singh Chhabra Vs. Union of India reported in 1997 (89) E.L.T. 646 (S.C.), the Hon'ble Supreme Court has held that "confessional statements" made before Customs Officer though retracted within six days is an admission and binding since Custom Officers are not Police Officers. In the present case also the statements were made confessing the guilt by the husband of the petitioner and later on he has retracted from that statement as stated in the writ petition and therefore, in light of the Hon'ble Supreme Court's judgment no relief can be granted in the present writ petition on the basis of aforesaid ground keeping in view the judgment of Hon'ble Supreme Court.

24. (xxxx….xxxx….xxxx) The aforesaid case was a case under the Foreign Exchange Regulation Act, 1973 and the Hon'ble Apex Court has held that evidence brought on record by way of confession, which stood retracted must be substantially corroborated by other independent and cogent evidence, which would lend adequate assurance to the Court that it may seek to rely thereupon. In the present case, the authorities are at the stage of investigation. The evidence is being collected and therefore, at this stage, the judgment relied upon by learned counsel for the petitioner is of no help.

25. Resultantly, keeping in view the totality of the circumstances ofthe case, the material available in the case diary and also keeping in view

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> *Section 67(2) of the CGST Act, 2017, this Court is of the opinion that the authorities have rightly seized the amount from the husband of the petitioner and unless and until the investigation is carried out and the matter is finally adjudicated, the question of releasing the amount does not arise. The writ petition is dismissed."*

25.2 Having had the benefit of the aforesaid view, with respect, we are unable to accept an interpretation that treats currency as a "thing" under Section 67(2), for such construction would defeat the express exclusion of money from the definition of goods and would confer upon the revenue authorities a power which it so appears that the Parliament has not expressly granted.

25.3 The power of search and seizure is a serious invasion upon a person's proprietary and possessory rights. Such power must, therefore, be exercised strictly within the bounds of the statute. It is not open for us to expand its scope on considerations of administrative convenience or on the basis that cash may have some connection with an alleged tax contravention. If the legislature considers it necessary to confer a specific power to seize unaccounted cash or alleged sale proceeds in GST proceedings, it is for the legislature to enact such a provision.

25.4 Even otherwise, the decision in **Kanishka Matta (*supra*)** is distinguishable on facts. We have already recorded our inability to accept the construction of the word "things" adopted there. We feel that the distinction needs to be adumbrated and we do so in the succeeding part.

25.5 Some features are though common in the case in hand as was the case in **Kanishka Matta** viz. cash was recovered from residential premises. Goods were also seized during the same search operation. The position is the same here. Cash was recovered from the residential premises. Cigarettes were seized from the shop and godown.

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25.6 However, the distinguishing feature of **Kanishka Matta (*supra*)** lies elsewhere. The husband of the petitioner there had made a voluntary statement. He stated that the cash represented the sale proceeds of pan masala sold without payment of GST. The respondents there also produced the case diary in a sealed cover. The case diary recorded that the cash was seized under a reasonable belief that it represented proceeds of the illicit supply of tobacco and pan masala (paragraph 14 of that decision). The Court dismissed the petition on the totality of that material. It also noted that the investigation was still in progress and that evidence was being collected.

25.7 We now turn to the case before us. The respondents rely on the seizure of cigarettes, the statements recorded during the search and the WhatsApp communications. These materials are directed at the allegation that petitioner No.1 dealt in cigarettes without accounting for them. None of them is shown to have direct link with the seized cash or with any particular untaxed supply. Moreover, the respondents have not identified any statement, account, transaction record or other document that does so.

25.8 The respondents also refer to an admission made at the time of search. As pleaded, the admission is that Rs.37,45,000/- belonged to petitioner No.1. He is also said to have undertaken to produce documents in support. That is an admission about ownership. It is not an admission that the cash was the sale proceeds of clandestine sales.

25.9 The seizure of goods connected with untaxed transactions does not, by itself, justify the seizure of cash. Section 67(2) treats goods liable to confiscation and documents, books or things useful or relevant to proceedings as separate categories. The power to seize each must satisfy its own statutory condition. The discovery of cigarettes allegedly

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dealt with without payment of tax does not raise a presumption that every sum found during the search is the proceeds of those dealings. The explanation of the petitioners may not be conclusive. But its rejection cannot itself supply the missing statutory foundation. Unlike the factual foundation noticed in **Kanishka Matta**, the respondents have not identified material that explains the evidentiary relevance of the currency to proceedings under the Act. Mere contemporaneous recovery cannot make good that deficiency.

25.10 Suspicion that money represents business receipts must also be tested against the purpose for which it was seized. Currency that has evidentiary value no doubt can be seized. Cash that merely represents unaccounted wealth cannot be seized under Section 67. In the present case, the respondents have not shown that the seized notes are required as an evidence for any proceeding. The impugned order treats the cash as liable to confiscation. It does not rely on the notes as material that yields information. The retention is thus towards a possible future recovery. To reiterate, Section 67(2) does not permit it.

25.11 We therefore hold that the seizure of cash cannot be sustained even if the view in **Kanishka Matta (*supra*)** were assumed to hold the field.

26. We clarify that we are not, in the present writ petition, examining the correctness of the factual findings concerning the alleged unaccounted purchase or sale of cigarettes, the alleged failure to obtain registration, the evidentiary worth of the statements recorded during the search, the ownership of the seized cigarette stock, or the tax, penalty and other consequences arising from the Order-in-Original dated 11.06.2024. Those questions are either the subject matter of the statutory appeal or may be determined in accordance with law by the

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competent authorities. What is held is confined to the absence of power under Section 67(2) of the CGST Act to seize and retain cash as such.

27. Consequently, the seizure and retention of Rs.47,45,000/- in cash from the residential premises of the petitioners cannot be sustained. The respondents are directed to release the seized amount to the persons from whose possession it was seized, subject to any lawful claim, restraint, attachment or order passed by a competent authority under an independently applicable statutory provision.

28. Since the amount has remained with the Department pursuant to an action which is found to be without authority under Section 67(2) of the CGST Act, the petitioners shall also be entitled to applicable interest in accordance with law from the date of expiry of a reasonable period after seizure until actual payment. The respondents shall determine and disburse such interest in accordance with the governing statutory provisions and applicable legal principles.

29. The amount shall be released within a period of six weeks from the date this order is uploaded on the website of this Court, unless its release is lawfully prevented by a specific order passed by a competent court or authority under any other proceedings.

30. The writ petition is allowed to the aforesaid extent. No order as to costs.

31. All pending applications also stand disposed of.

(ASHUTOSH KUMAR),J **(ARUN MONGA),J**

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