

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 4729 of 2024

M/s. Kanak Timber House & Anr.

v.

Assistant Commissioner of Sales Tax & Ors.

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|---------------------|---|---|
| For the petitioners | : | Mr. Ankit Kanodia Ms. Mesha Agarwal Mr. Jitesh Soh |
| For the State | : | Mr. Anirban Ray Mr. T. M. Siddiqui Mr. Tanoy Chakraborty Mr. Saptak Sanyal |
| Heard on | : | 11 th March, 2024 |
| Judgment on | : | 11th March, 2024 |

Raja Basu Chowdhury, J:

1. Considering the nature of urgency involved, the present writ petition is taken up for consideration.
2. The present writ petition has been filed, *inter alia*, praying for quashing of the order of prohibition dated 25th March, 2023 issued under Section 67(2) of the CGST/WBGST Act, 2017 (hereinafter referred to as the "GST Act").

3. It is the petitioners' case that on/or about 24th March, 2023, a search and seizure procedure was initiated under Section 67 of the GST Act at the petitioners' registered place of business. On the following date, in terms of first proviso to Section 67(2) of the GST Act, a prohibitory order was issued. Since then, on 26th December, 2023, a notice under Section 122 of the GST Act was issued. According to the petitioners, the petitioners had duly responded to the said notice and are participating in the proceedings. Subsequently, on 17th January, 2024, the petitioners had requested the respondents to release the stock of timber which had remained seized and covered under the prohibitory order dated 25th March, 2023.
4. In response to such application, the office of the respondent no.1 by an e-mail communication dated 25th January, 2024 without appropriately replying to the petitioners' communication had only informed that a show-cause notice under Section 122 of the GST Act has already been issued.
5. Mr. Kanodia, learned advocate representing the petitioners, by drawing attention of this Court to Section 67(2) of the said Act submits that power has been vested on 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 book 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 authorize in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or things.

6. By referring to the first proviso to Section 67(2) of the GST Act, it is submitted that when it is not practicable to seize any such goods, the proper officer or any other officer authorized by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with or otherwise deal with the goods except with the previous permission of such officer. Mr. Kanodia submits that the respondent no.1 by invoking the first proviso to Section 67(2) had issued the order dated 25th March, 2023.
7. By referring to Section 67(7) of the GST Act, he submits that when any goods are seized under sub-section (2) and no notice in respect thereof has been given within six months from the date of seizure of the goods, the goods shall be returned to the person from whose possession those were seized.
8. By placing reliance on the aforesaid provision, it is submitted that since the respondent no.1 had issued a show-cause under Section 122 of the GST Act, beyond the prescribed period of six

months, the respondent no.1 was obliged to return the goods to the petitioner.

9. In support of his aforesaid contention, he has placed reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh v. Kay Pan Fragrance Pvt. Ltd.***, reported in **(2020) 5 SCC 811**, and the judgment delivered by the Hon'ble High Court of Delhi in the case of ***Best Crop Science Pvt. Ltd. v. Superintendent of Central Goods and Services Tax Delhi West***, reported in **(2023) 10 Centax 295 (Del.)**.
10. *Per contra*, Mr. Chakraborty, learned advocate representing the respondents has taken me through the provisions of Section 67(7) of the GST Act. According to Mr. Chakraborty, the said section comes into play when no notice of the seizure is issued within a period of six months. Mr. Chakraborty further by referring to the provisions of Section 67(6) of the said Act submits that an assessee has a right to get such goods released on provisional basis even upon execution of a bond and furnishing a security in such manner and of such quantum, respectively, as may be prescribed. According to him, the petitioners have not approached the respondents for release of the goods even on provisional basis. The letter dated 17th January, 2024 do not call provisional release of goods. Having regard to the aforesaid, it is

submitted that no case for interference has been made out as the assessee has not approached the respondents for release of the seized goods in terms of Section 67(6) of the GST Act.

11. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly in this case it is noticed that a prohibitory order has been passed by invoking the first proviso to Section 67(2) of the GST Act. Admittedly, the assessee has not approached the respondent no.1 for release of goods under Section 67(6) of the GST Act and I find that the Hon'ble Supreme Court in the case of **State of Uttar Pradesh** (*supra*) has clearly highlighted that the assessee in order to seek release of the goods must invoke the provisions of the GST Act to seek release of the goods. The Hon'ble Supreme Court in paragraph 12 has, *inter alia*, observed as follows:-

“12. There is no reason why any other indulgence need be shown to the assessees, who happen to be the owners of the seized goods. They must take recourse to the mechanism already provided for in the Act and the Rules for release, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum (even up to the total value of goods involved), respectively, as may be prescribed or on payment of applicable taxes, interest and penalty payable, as the case may be, as predicated in Section 67(6) of the Act. In the interim orders [Kay Pan Fragrance (P) Ltd. v. State of U.P., 2019 SCC OnLine All

6201] [Mahaveer Trading Company v. State of U.P., 2019 SCC OnLine All 6203] passed by the High Court which are subject-matter of assail before this Court, the High Court has erroneously extricated the assessee concerned from paying the applicable tax amount in cash, which is contrary to the said provision.”

12. Insofar as the judgment delivered in the case of **Best Crop Science Pvt. Ltd.** (*supra*), I find that the Hon'ble Delhi High Court taking note of the provisions of Section 67(7) of the GST Act has observed that the prohibitory order cannot be permitted to continue indefinitely. In this case it may be relevant to consider that the assessee has not approached the respondents under Section 67(6) of the GST Act and as such, there is no reason for this Court to interfere at this stage save and except, if any application is made by the assessee with the respondent no.1 in terms of Section 67(6) of the GST Act, the same shall be considered in accordance with law.

13. With the above observations and/or directions the writ petition stands disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)