

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO.21039 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

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Approved for Reporting	Yes	No
	✓	

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M/S REEVAN CREATION

Versus

STATE OF GUJARAT & ORS.

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Appearance:

ASHVA LEGAL ADVISORS LLP(13473) for the Petitioner(s) No. 1

MR.AVINASH PODDAR(9761) for the Petitioner(s) No. 1

MS ANCHAL A PODDAR(13386) for the Petitioner(s) No. 1

MR HARSHVARDHAN SHARMA AGP for the Respondent(s) No. 1,2,3,4,5

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CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

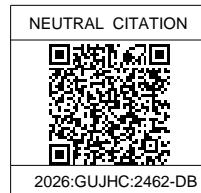
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 09/01/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Heard learned advocate Mr. Avinash Poddar for the petitioner through hybrid mode and learned Assistant Government Pleader Mr. Harshvardhan Sharma for the respondents.
2. Rule returnable forthwith. Learned Assistant Government Pleader Mr. Harshvardhan Sharma waives service of notice of rule on behalf of the respondents.
3. The matter was today specifically kept on the request of learned Assistant Government Pleader Mr. Harshvardhan Sharma to verify with regard to the limitation period as provided under Section 83 (2) of the Goods and Service Tax Act, 2017 (For short "GST Act") of one year having been expired and as regards to release of seized articles / goods of the

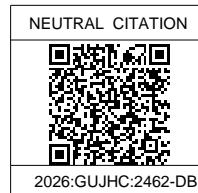


petitioner.

4. The facts in brief are that the petitioner is a partnership firm *inter alia* engaged in the business of trading of Gold, silver, diamonds and jewellery etc. On 09.03.2022, the Assistant Commissioner of State Tax, Ghatak-8 carried out the search under Section 67(2) of the GST Act at the registered premises of the petitioner. Thereafter, on 10.03.2022, the respondent no. 5 issued an order of provisional attachment of bank account in Form GST DRC-22 attaching the bank accounts operated by the petitioner with HDFC Bank and SBI Bank.

4.1. It is further the case of the petitioner that during the course of search proceedings on 14.03.2022, the respondent no. 3 seized gold, silver and cash and also issued order of seizure in Form GST INS-02. It is the case of the petitioner that since more than 20 months have elapsed on 29.09.2023, the goods of the petitioner were not released despite the maximum period of one year being over. Thereafter on 29.09.2023, the petitioner vide letter dated 06.09.2023 requested the respondent no. 3 to release goods and cash seized during the course of search proceedings since it has been more than 20 months. A further request was also made to vacate the provisional attachment from the bank accounts. Thereafter reminders were also sent by the petitioner on 05.10.2023 and 17.10.2023 respectively. Since no response was received from the respondents, the petitioner was constrained to approach this Court by way of this petition.

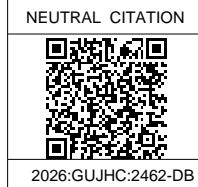
5. Learned advocate Mr. Avinash Poddar for the petitioner at the outset has submitted that as per the provisions of Section 83(2) of the GST Act, after a period of one year has elapsed, the provisional attachment of the bank accounts has to be lifted and the account has to be defreezed. However, the same has not been done. So far as the issue with regard to the seizure of gold articles is concerned, he has referred to the provisions of Section 67 of the GST Act, more particularly, sub-section (7) of the GST Act and has submitted that under sub-section (2) where any goods are



seized, 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.

5.1. Thus, it is urged that the present writ petition may be allowed and the respondents may be directed to lift the attachment from the bank accounts and release the articles which are seized. In support of his submission, learned advocate Mr. Poddar has placed reliance on the decision of this Court in case of *Bharat Kumar Pravin Kumar & Co. v. State of Gujarat* rendered in *Special Civil Application No. 26222 of 2022 dated 26.10.2023*.

6. Upon opposing the present writ petition, learned Assistant Government Pleader Mr. Harshvardhan Sharma has referred to the averments made in the affidavit-in-reply and has submitted that the petitioner has committed huge tax evasion through the firms operated by him and in fact charge sheet was also filed against him which mentioned about tax evasion amounting to Rs.26.75 crores and accordingly provisional attachment order was passed on 10.03.2022, wherein the bank accounts of the petitioner were attached. It is submitted that as per the provisions of Section 67(2) of the GST Act, gold and other bullion of approximately 1175.82 grams and cash of Rs.5,54,130 was seized. It is submitted that notice under Section 130 of the GST was issued on 21.06.2024 i.e. two years after the seizure of the bank accounts and the articles. The reason assigned for delay in the affidavit-in-reply is that due to lack of clarity and ongoing investigation, no action could be undertaken by the respondents since various firms were being operated by the petitioner and in order to streamline the investigation, a single conducting officer being Assistant Commissioner of State Tax, Unit-10 was appointed by the Joint Commissioner (Division-1) vide letter dated 27.04.2022 and thereafter the case files were transferred. Thus, it is submitted that looking to the huge tax evasion and also the seizure of gold and metals along with



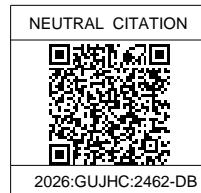
cash of the petitioner, the writ petition may be rejected.

7. We have heard the learned advocates appearing for the respective parties. The facts which are established from the record points out towards serious dereliction in carrying out the official duty by the concerned officer, and it appears that they have not followed the statutory provisions to give leverage to the present petitioner to get out of confiscation, to release the gold and metal articles and lifting the attachment of the bank accounts. The facts are that search was carried out on 08.03.2022 in case of J.K. Traders Proprietorship. A panchanama dated 09.03.2022 and 14.03.2022 was prepared pursuant to the search undertaken under Section 67 (2) of the GST Act. During search, 1175.82 grams of gold mixed with other metals and cash of Rs.5,54,130/- was found at the place of business. Tax evasion to the extent of Rs. 26 crores was found and one Mr. Anant Shah was arrested on 13.03.2022. These facts speaks to the extent of tax evasion and the loss caused to the Revenue. The officers were aware about the said tax evasion. However, their subsequent conduct in handling the matters appears to be doubtful in the following circumstances.

7.1. After the search was conducted, a provisional attachment was passed on 10.03.2022 wherein the bank accounts of the petitioner were attached. The deponent of the affidavit-in-reply dated 26.06.2024 in fact in paragraph 10 has admitted that under the provisions of Section 83(2) of the GST Act, such provisional attachment expires after a period of one year. It is also admitted that inadvertently no fresh order of provisional attachment has been passed in the case of the petitioner. This is the first omission which is committed by the concerned officer. During the course of search, as mentioned herein above, the gold and other bullion as well as cash were seized as per the provision of Section 67 of the GST Act, which reads as under :-

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

(1) Where the proper officer, not below the rank of Joint Commissioner,



has reasons to believe that-

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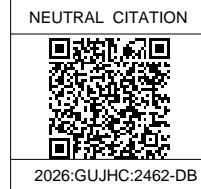
(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books of things, which in his opinion shall be useful for or relevant 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 books or things.

(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 are 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."

7.2. As per the aforesaid provision, after seizure of goods which are liable for confiscation, the competent officer is required to issue a notice within a period of six months, which has not been done. This is the second lacuna. The proviso to sub-section 7 of section 67 of the GST Act also enables to issue another notice if sufficient cause is shown. No notice has been issued by resorting to this proviso, this is the third lacuna, and thereafter, the notice of confiscation under section 130 of the GST Act has been issued on 21.06.2024 during the pendency of this petition. This is the fourth illegality committed by the respondent-officer/s.

8. The only excuse for committing such omissions emerges from the averments of paragraph 14 of the affidavit in reply, wherein it is admitted that due to lack of clarity and ongoing investigation and since various firms were involved and in order to streamline the investigation, the delay has occurred and the investigation was handed over to a particular rank of officers. Thus, it appears that the respondent officer, though being aware of the statutory provisions and the limitation period sat idle and did not issue any notices, and paved the way for the petitioner to take shelter of such omissions. This approach adopted by the respondents in handling the



entire matter *prima facie* appears to be thoughtful. Hence, we direct the respondent no. 2 - Chief Commissioner of State Tax to hold appropriate inquiry against the officer/s involved in leaving the loopholes, which has ultimately aided the petitioner.

9. Thus, the present petition succeeds. The respondent no. 3 is directed to release the goods and cash seized during the course of search and further direct respondent no. 5 to lift the provisional attachment of bank account. The same shall be done within a period of ten days from the date of receipt of the order of this Court. Learned advocate Mr. Poddar at this stage has submitted that the petitioner will fully co-operate with the ongoing investigation.

10. Rule is made absolute to the aforesaid extent.

11. Registry is directed to convey the present order to the respondent no.2 forthwith. The matter shall be listed only for the purpose of examining the status of the inquiry conducted by the respondent no. 2 as directed by us.

The matter is ordered to be listed on **11.02.2026 on the top of the Board.**

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI, J)

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