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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 21st July, 2023

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W.P.(C) 5056/2023

BALESHWARI DEVI

..... Petitioner

Through: Mr. Akhil Krishan Maggu, Mr.
Vikas Sareen, Ms. Maninder
Kaur and Ms. Oshin Maggu,
Advs.

versus

**ADDITIONAL COMMISSIONER (ANTI-EVASION),
CENTRAL GOODS AND SERVICE TAX,
DELHI NORTH, NEW DELHI & ORS.**

..... Respondents

Through: Mr. Atul Tripathi, SSC with
Mr. V. K. Attri, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition impugning the action of the respondents in removing a sum of ₹19,50,000/- from her premises during a search conducted under Section 67 of the Central Goods and Service Tax Act, 2017 (hereafter '**CGST Act**'). The petitioner further prays that directions be issued to the respondent to refund the said amount.

2. The petitioner is a senior citizen and claims that she is a



proprietor of a concern named M/s Bishan Saroop Ram Kishan.

3. The petitioner claims that, on 09.11.2021, a search was conducted in the residential premises bearing the address, 25/75, Shakti Nagar, New Delhi-110007, where the petitioner and her family reside. At the material time, the petitioner was not present at her residence and the room occupied by her was locked. During the course of the search, respondents seized some files, loose papers and cheque leaves. They also found a sum of ₹19,50,000/- in cash and took possession of the same.

4. It is stated that the said cash was handed over by Respondent No. 2 to respondent No. 3 and thereafter, was placed in a fixed deposit.

5. The Panchnama was drawn up. The Panchnama records that one room was found locked and the petitioner's daughter-in-law, Smt. Seema Gupta, had informed the respondents that she did not have the keys to that room. During the search proceedings, the duplicate keys were made and the door of the room was opened in the presence of Smt. Seema Gupta.

6. The petitioner claims that the sum of ₹19.5 lakh was found from the said room, which was locked.

7. The Panchnama further records that Smt. Seema Gupta could not provide any justification or document for legal possession of the said cash.

8. There is a serious controversy whether the respondents have any authority to seize currency during search proceedings under Section 67 of the CGST Act. However, it is not necessary to examine the



controversy in the present case because it is admitted that the respondents have not seized the cash. The seizure memo also does not record seizure of the cash.

9. The respondents have innovatively coined another term 'resume' - to denote taking forcible possession of the assets without recording seizure of the said assets. There is no provision under the CGST Act, which empowers the respondents to "resume" or dispossess any person of his assets, without seizing the same.

10. There is no dispute that the respondents are required to act strictly in accordance with the provisions of the statute and the rules thereunder. Clearly the action of the respondents in dispossessing the petitioner or any of the family members of any of their assets in the proceedings under Section 67 of the CGST Act, without seizing the same, is illegal. The respondents cannot continue with the possession of the currency collected from the petitioner's residence.

11. This court is informed that respondents had after taking over possession of the currency from the residence of the petitioner proceeded to deposit the same with Canara Bank in a fixed deposit for a term of twelve months.

12. Mr. Atul Tripathi, learned counsel appearing for the respondents, submits that no proceedings for returning the amount were undertaken as none had approached the concerned respondents for seeking return of the said amount. He also contends that Smt. Seema Gupta had made a statement during the search proceedings that she did not have any documents to justify the legal possession of the cash amount. And since she was present at the premises during the



search proceedings, the respondent had assumed that the cash was in her possession.

13. The assumption that the cash recovered from the locked room was in the possession of Seema Gupta (the petitioner's daughter-in-law) is *ex facie* erroneous. It was recovered from a room that was locked and the record shows that Ms Seema Gupta did not have the keys to that room.

14. In view of the above, we direct the respondents to refund the amount to the petitioner. To obviate any further controversy in this regard, the petitioner as well Smt. Seema Gupta shall appear before Respondent No. 3 at the office of Respondent No. 3, on 26.07.2023 at 12:00 noon.

15. In the event Ms Seema Gupta does not dispute that the money in question belongs to the petitioner, respondent No. 3 shall take immediate steps for pre-mature encashment of the fixed deposit and transfer of the proceeds to the account of the petitioner.

16. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JULY 21, 2023

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