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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 7618/2019 & CM APPL. 42253/2019**

M/S. GOYAL METAL UDYOG Petitioner

Through: Mr. Ruchir Bhatia &
Mr. Rakesh Kumar, Advs.

versus

COMMISSIONER OF CENTRAL
GOODS & SERVICES TAX & ANR. Respondents

Through: Mr. Harpreet Singh, Sr.
SC with Ms. Suhani
Mathur & Mr. Jatin Kumar
Gaur, Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
22.08.2023

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1. The petitioner has filed the present petition, *inter alia*,
praying as under:

- “i) Issue a writ of certiorari or any other writ, order or direction in the nature thereof quashing the proceedings by the Respondents against the Petitioner;*
- ii) Issue a writ of mandamus or any other writ, order or direction in the nature thereof directing the respondents to release the amount of Rs.50,70,000/- seized by the Respondents;*
- iii) allow the Petitioner to adjust the amount of Rs. 11,41,750/- against future liability;*
- iv) award costs of this Petition; and/or;*
- v) pass such other order or orders as may be deemed fit and appropriate under the facts and circumstances of the case.”*

2. The petitioner carries on business, *inter alia*, in the name of his sole proprietorship concern, Goyal Metal Udyog and has filed

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the present petition in the name of the said concern. The petitioner's business premises were searched by the Officers of the Anti-Evasion Branch of the Central Goods and Service Tax, Delhi East Commissionerate, on 03.05.2018.

3. The petitioner claims that during the search, the concerned officers examined the stocks of raw material and finished goods and found that the same were duly recorded in the books of accounts and record. However, during the search, the Officers also found Indian currency amounting to ₹50,70,000/-, which was lying in a locker.

4. According to the petitioner, the same belonged to the family members of the petitioner. It was brought from the residential premises to the business premises as their residential house was under renovation and there were large number of labourers working in the premises.

5. Thereafter, summons under Section 70 of the of the Central Goods and Services Tax Act, 2017 (hereafter '**the CGST Act**') was issued, calling upon the petitioner to produce various documents including all documents relating to sales and purchases effected during the preceding five years; the statement of bank account for the preceding five years; and the details of all other related companies along with documents relating to sales and purchases.

6. The cash seized from the premises of the petitioner was deposited by the respondent with Syndicate Bank in the name of the Commissioner, CGST, Delhi.

7. The petitioner continued to pursue the respondent for the release of the said cash and original documents, however, the cash so seized was not released.

8. The petitioner states that he was called upon by the



respondents to deposit tax, interest and penalty, amounting to ₹11,41,750/- which would be payable in the event, the cash seized represented proceeds of undisclosed sales. It is claimed that although no such amount was payable, he deposited the said amount on 23.11.2018, on the assurance that the cash seized, would be released.

9. Thereafter, the petitioner requested the respondents to release the amount of cash seized. But his requests were in vain and no steps in this regard were taken by the respondents.

10. The petitioner issued another letter dated 24.05.2019, reiterating his request. But the respondents did not accede to the said request.

11. It is the petitioner's case that seizure of cash is illegal and the respondents had no power to seize cash on the suspicion that it was unaccounted cash.

12. In the aforesaid context, the petitioner has prayed for release of the cash so seized as well as for adjusting the amount of tax, penalty and interest deposited (₹11,41,750/-), against its future liability.

13. In so far as the power under Section 67(2) of the CGST Act, to seize cash on the ground that it is unaccounted cash is concerned, the said issue is covered in favour of the petitioner by the recent decision of this Court in *Deepak Khandelwal Proprietor M/s Shri Shyam Metal v. Commissioner of CGST, Delhi West & Anr.* : Neutral Citation No. 2023:DHC:5823-DB.

14. Thus, the currency seized is required to be released to the petitioner.

15. In so far as the petitioner's prayer for adjustment of ₹11,41,750/- against future liability is concerned, it is not



disputed that the petitioner had deposited it voluntarily. The respondents have not accepted that the said amount is refundable to the petitioner. Mr Singh, learned counsel appearing for the respondents submits that apparently, no steps were taken by the respondents in regard to the tax deposited as the present petition was pending. Thus, we consider it is apposite to clarify that the respondents are not precluded from taking any steps in regard to the said duty so deposited. The petitioner is also not precluded from filing an appropriate application for refund of the said amount, if otherwise due.

16. It is clarified that the period spent by the parties during the pendency of the present petition, that is, from the date this petition was instituted till date, shall be excluded from the period of limitation, as may be applicable to proceedings that may be instituted by either of the parties.

17. The petition is allowed in the aforesaid terms.

18. The respondent is directed to remit the proceeds of the fixed deposit (along with interest) to the bank account of the petitioner, within a period of one week from today.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

AUGUST 22, 2023
“SS”