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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12902 OF 2024

H. K. Jewels Private Limited & Anr. ...Petitioner

Versus

The Assistant Director of Income Tax
Investigation & Ors. ...Respondent

Mr. Devendra Jain a/w Mr. Shashank Mehta i/by Ms. Radha Halbe,
for the Petitioner.

Mr. Prithish Chatterjee, for Respondent Nos.1 & 2.

CORAM M.S. Sonak &
Jitendra Jain, JJ.
DATED: 24 February 2025

PC:- (Per M. S. Sonak, J.)

1. Heard learned counsel for the parties.
2. The petitioners' contention is that its gold and jewellery seized at Bhubaneswar Airport on 12 May 2024 is illegal and ultra vires given the provisions of Section 132(1)(iii) of the Income Tax Act, 1961 ('the Act'). He submitted that in terms of this provision, 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.
3. Mr. Chatterjee, learned counsel for the revenue

submitted that the petitioners have alternate and efficacious remedy under Section 132B of the Act. He referred to paragraph 6 of the affidavit filed on behalf of the revenue in which such a plea was raised.

4. Mr. Jain, learned counsel for the petitioners disputes the applicability of Section 132B in the peculiar facts of this case. He submits that this is a jurisdictional issue and, therefore, this Court should issue a writ of mandamus to the respondents to release the seized gold and jewellery.

5. There is a dispute regards the date of seizure. According to the petitioners, the seizure was on 12 May 2024 whereas according to the revenue, seizure was on 1 June 2024. However, considering the main contention raised by the petitioners, the date of seizure may not be very important.

6. By communication dated 10 July 2024, the petitioners submitted certain clarifications regarding the statement recorded under Section 131(1-A) of the Act. However, in the clarification, no specific plea is raised regards seizure being ultra vires the provisions of Section 132(1)(iii) proviso of the Act. If the petitioners seek writ of mandamus, it is important that the petitioners demand justice from the authorities and this is followed by refusal. The issue of seizure being ultra vires Section 132(1) does not appear to have been raised by the petitioners and based upon the same, there is no demand of return of the gold and jewellery.

7. Mr. Jain submits that he would obtain instructions whether such demand is made. If such demand is indeed made, then, the petitioners must point out such demand to the

respondents so that the respondents can deal with such demand. If no demand is made, we grant the petitioners a week's time to make such demand by giving full particulars and also, by referring to the relevant legal provisions upon which the petitioners seek to rely upon. Within two weeks from receipt of such demand/application/representation, the concerned respondents must deal with such demand/application/representation and dispose of the same in accordance with law. The petitioners must be given an opportunity of hearing and a reasoned order must be passed dealing with all the petitioners' contentions, including the contention based on the proviso to Section 132(1)(iii) of the Act. All contentions of the parties are however, left open to be decided by the concerned respondents in the first instance.

8. With the above directions, this petition is disposed of. There shall be no order as to costs. All concerned to act on the authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)