***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved on: 11th March, 2016
Judgment Delivered on: 12th May, 2016

\+ **W.P.(C) 7978/2010 & CM No. 20590/2010 (stay)**

GAURI SHANKAR AND ORS .....Petitioners

Versus

DIRECTOR OF INCOME TAX AND ORS …Respondents

Advocates who appeared in this case:

For the Petitioners: Mr Rakesh Gupta, Ms Poonam Ahuja, Mr Somil Agarwal, Mr Rohit Kumar Gupta and Ms Monika Ghai, Advocates

For the Respondents: Mr Rahul Chaudhary, Sr. Standing Counsel for ITD
Mr Anuj Aggarwal with Mr Shubhanshu Gputa, Advocates for R-2 & R-3

\+ **LPA 250/2011 & CM Nos.5488/2011 (for stay), 5489/2011 (for condonation of delay)**

DIRECTOR OF INCOME TAX ..... Appellant

Versus

GAURI SHANKAR AND ANR. …Respondents

Advocates who appeared in this case:

For the Petitioners: Mr Rahul Chaudhary, Sr. Standing Counsel for ITD

For the Respondents: Mr Rakesh Gupta, Ms Poonam Ahuja, Mr Somil Agarwal, Mr Rohit Kumar Gupta and Ms Monika Ghai, Advocates
Mr Rakesh Kumar, CGSC for R-2.

\+ **LPA 511/2011 & CM No.10888/2011 (for condonation of delay)**

UNION OF INDIA
THR. ENFORCEMENT DIRECTORATE ..... Appellant

Versus

GAURI SHANKAR AND ORS. …Respondents

Advocates who appeared in this case:

For the Petitioners:	Mr Rahul Chaudhary, Sr. Standing Counsel for ITD Mr Rakesh Kumar, CGSC
For the Respondents:	Mr Rakesh Gupta, Ms Poonam Ahuja, Mr Somil Agarwal, Mr Rohit Kumar Gupta and Ms Monika Ghai, Advocates Mr Akshay Anand, Ms Meena Sabharwal, Ms Sonam Nagrath Kohli and Ms Jacklin, Advocates.

CORAM:
HON'BLE MR. JUSTICE BADAR DURREZ AHMED
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. The two appeals (LPA 250/2011 and LPA 511/2011) and the writ petition (WP(C) 7978/2010) raise common questions of fact and as such are being taken up for disposal together.

2. Writ Petition (c) No. 7978/2010 has been filed by Gauri Shankar Goel in the capacity of Director of M/s J.P. Goel and Sons Private Limited as also in his individual capacity and by Shri Shankar

Lal Goel seeking quashing and setting aside warrant of authorization dated 17.07.2009 under Section 132 (A) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

3. On 11.07.2005, a search and seizure operation was carried out at the premises of the Petitioner No. 1 (i.e. Gauri Shankar Goel Director of M/s J.P. Goel and Sons Private Limited) by the Enforcement Directorate. Gold weighing 6 Kilograms and Indian currency amounting to Rs. 1,41,000/- was seized under the Foreign Exchange Management Act, 1999 (FEMA for short).

4. The petitioners challenged the seizure and requested release of the gold and seized Indian currency from the Directorate of Enforcement.

5. The Petitioners filed a petition before this Court bearing WP (C) No. 3908/2008 against the Enforcement Directorate challenging the seizure of the stock of gold and cash and for release thereof.

6. It is contended that M/s J.P. Goel and Sons Private Limited is engaged in the business of gold and bullion since 1999. In WP(C) No. 3908/2008, Enforcement Directorate filed an affidavit contending that though the seizure had been made, no case could be made out in respect of the seized stock of gold bars and the Indian currency and the matter had been referred to the Income Tax Department for taking such action as may be deemed fit by them. On 22.07.2009, Income

Tax Department was put to notice in the said WP(C) No. 3908/2008. The Assistant Director of Income Tax (Investigation) filed an affidavit contending that warrant of authorization under Section 132 (A) of the Act had been issued on 17.07.2009 and the warrant of attachment was executed on 20.07.2009 and stock of 6 Kilograms gold bars were handed over on 28.08.2009 to the Department and cash of Rs. 6,99,000/- was also handed over on 31.08.2009. The cash of Rs. 6,99,000/- comprised of Rs. 1,49,000/- seized from the petitioner and Rs. 5,50,000/- seized from one Mr. Tulsi Bhai s/o Sh. Moolgi Bhai, who happened to be present in the premises of the petitioners during the search and seizure operation.

7. By order dated 10.12.2010, a learned single Judge disposed of Writ Petition (C) 3908/2008 holding that from the affidavit of the Directorate of Enforcement, it was admitted that there was no legal justification for seizing the 6 Kilograms of gold from the business premises of the petitioner by the Enforcement Directorate. There was no FEMA violation in that regard and with regard to seizure of cash of Rs. 1,49,000/-, no legal justification has been shown by the Enforcement Directorate and the case was merely referred to the Income Tax Department for taking further action nearly four years after the seizure. It was not understandable as to how, without any legal justification for detention of the Indian currency amounting to Rs. 1,49,000/- and 6 Kilograms of gold bars, it was retained by the

Enforcement Directorate till 28.08.2009 for over four years. The affidavit confirmed that the seized articles had been handed over to the Income Tax Department on 28.08.2009. However, there was no communication as to what the Income Tax Department had done after issuance of warrant on 17th July, 2009 under Section 132 (A) of the Act. The writ petition was allowed with the direction to the respondent/Income Tax Department to immediately release the 6 Kilograms of gold as well as Indian currency amounting to Rs. 1,49,000/- seized from the premises of the petitioner and his brother, Shankar Lal Goel, petitioner No. 3 herein. The warrant under Section 132 (A) issued by the Income Tax Department on 27th July, 2009 was also quashed. The learned single Judge held that a perusal of Section 137 (A) of the Act showed that Section 37 of the FEMA could not be invoked to seize Indian currency.

8. Aggrieved by the order dated 10.12.2010 of the learned single Judge in WP(C) No. 3908/2008, the two Letters Patent Appeals have been filed. LPA No. 250/2011 has been filed by the Department of Income Tax and LPA No. 511/2011 has been filed by the Enforcement Directorate. The main contention raised by the Enforcement Directorate is that the findings returned by the learned single Judge in the impugned order to the effect that Section 37 of the FEMA could not be invoked to seize Indian currency was erroneous.

9. On the other hand, the Income Tax Department has impugned

the order in LPA No. 250/2011 primarily on the ground that it was justified in invoking the powers under Section 132 (A) of the Act and in executing the warrants of authorization and taking into custody six kilograms of gold bars and the Indian currency amounting to Rs. 1,49,000/-.

10. The respondent/Income Tax Department has filed a Counter Affidavit dated 20th April, 2011 in the present WP(C) 7978/2010. The respondent/ Income Tax Department with regard to the issue of delay in release of cash and gold bars has contended that it was only on 15th July, 2009 that it was requested by the Directorate of Enforcement to take appropriate action and immediately thereafter the Income Tax authorities have taken action for issuance of warrant of authorization. It is contended that original documents recovered from the petitioners were sought from the Directorate of Enforcement and the said original seized material was received on 4.4.2011. It is contended that the case of Gauri Shankar and Ors, the petitioners herein has been centralized with ACIT, Central Circle-15, New Delhi in the charge of Commissioner of Income Tax, Delhi (Central)-II, New Delhi vide order No. F.No./CCIT(Central)/Centralization/2010-11/2984 dt. 25.11.2010 and the factual report by the ADIT has been sent to the ACIT, Central Circle-15, New Delhi on 06.12.2010. The decision regarding release of the seized assets can be taken by CIT, Delhi (Central)-II, New Delhi only. It is contended that the seized material

has been handed over to DCIT, Central Circle on 16.04.2011.

11. There is no justification forthcoming from the respondent – departments as to on what basis and why they are continuing to retain the seized articles. There is nothing on record to show that any proceedings for assessment/re-assessment pertaining to the said seized articles have been initiated against the petitioners. There is no material brought on record by the respondents to justify either the seizure or retention of the said 6 Kilograms of gold bars and Indian currency amounting to Rs. 1,49,000/- seized from the business premises of the petitioner.

12. Additionally, at the time of hearing of the present petition, learned counsel appearing for the Income Tax Department contended that it was the case of the petitioners that the seized gold bars and cash belonged to the company, M/s J.P. Goel and Sons Private Limited. It is contended that the goods could only be released, if at all, in favour of M/s J.P. Goel and Sons Private Limited.

13. In response to the objections raised by the counsel for the Income Tax Department, counsel for the petitioners stated that the petitioner No. 1 is Director of M/s J.P. Goel and Sons Private Limited and is also arrayed as petitioner No. 2. Admittedly, the gold and currency were seized from the premises of the petitioners. To overcome any technical objection, it is contended that the petitioners

are competent to take possession of the seized articles on behalf of M/s J.P. Goel and Sons Private Limited also and the said goods and articles may be released to M/s J.P. Goel and Sons Private Limited through its Director, Mr. Gauri Shankar Goel.

14. The premises of the petitioners was raided on 11.07.2005 nearly 11 years ago. 6 Kilograms of gold bars and currency was seized therefrom. Till date, there is no justification forthcoming for either the conduct of the raid or for seizure of the said articles. There is nothing on record to show that any proceedings for assessment/re-assessment were initiated till date against the petitioners in respect of the articles seized in 2005. We find no justification for any further retention of the seized gold bars as well as the currency amounting to Rs. 1,49,000/-. The respondents are accordingly directed to forthwith release the 6 Kilograms gold bars as also the Indian currency amounting to Rs. 1,49,000/- in favour of M/s J.P. Goel and Sons Private Limited through its Director, Sh. Gauri Shankar Goel.

15. In view of the above, Writ Petition (C) No. 7978/2010 is allowed in the above terms. LPA No. 250/2011 filed by the Directorate of Income Tax is accordingly dismissed.

16. In LPA No. 511/2011, the only question urged by the appellant/Enforcement Directorate is that the finding returned by the learned single Judge that Section 37 of the FEMA cannot be invoked

to seize Indian currency is erroneous. Since, we have found the very seizure and detention unjustified and directed release of the gold bars as also the Indian currency, this question need not embroil us any further and has become purely academic in the facts of the present case. We, therefore, leave this question of law open for being settled in appropriate proceedings. The said LPA No. 511/2011 is also dismissed leaving the question of law open. There shall be no orders as to costs.

SANJEEV SACHDEVA, J.

MAY 12, 2016 **BADAR DURREZ AHMED, J.**
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