IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 14353 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS.JUSTICE HARSHA DEVANI

and
HONOURABLE MR.JUSTICE A.G.URAIZEE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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K S JEWELERS PVT LTD....Petitioner(s)
Versus
DIRECTOR OF INCOME TAX & 2....Respondent(s)

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Appearance:
MR SN SOPARKAR, SR. ADVOCATE with MR B S SOPARKAR, ADVOCATE for the Petitioner
GOVERNMENT PLEADER for the Respondent No. 2
MR M. R. BHATT, SR. ADVOCATE with MRS MAUNA M BHATT, ADVOCATE for the Respondents No. 1 , 3

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CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**
and

HONOURABLE MR.JUSTICE A.G.URAIZEE

Date : 06/10/2015

ORAL JUDGMENT
(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. This petition has been filed by the petitioner seeking the following substantive reliefs:

"7. The petitioner, therefore prays that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction or order and be pleased to:

(a) Quash and set aside the action of the Respondents in seizing the property of the petitioner, either without any authorization issued u/s 132A of the Income Tax Act, 1961 OR if there be any such authorization to quash and set aside the same being without jurisdiction and to direct the respondents to handover the seized silver ornaments to petitioner.

(b) Quash and set aside the impugned order at ANNEXURE-'D' passed by Additional Sessions Judge, Surat and order passed by Learned JMFC at ANNEXURE-'C' as the same is passed without any authorization under section 132A of the Income Tax Act, 1961."

2. The petitioner is engaged in the business of jewelry at

Varanasi. The petitioner, in the regular course of business, through its authorised person purchased 71.36 KG silver ornaments on 20.09.2011 from A.C. Enterprise, Rajkot with whom the petitioner had regular business transactions. The said ornaments were purchased through bills and value added tax was duly paid according to applicable laws. On 23.09.2011, the authorized person of the petitioner was searched by Railway Police while he was carrying the purchased silver ornaments back to Varanasi. During the search, the authorized person of the petitioner was found to be in possession of 219.841 kilograms silver ornaments worth Rs.48,79,923/-. The Railway Police seized the silver ornaments from the authorised person of the petitioner and also registered a case under section 124 of the Bombay Police Act. It appears that the Railway Police informed the Income Tax Department about the seizure of silver ornaments pursuant to which, the Income Tax Department claimed the seized ornaments for the purpose of investigation under the provisions of the Income Tax Act, 1961. Against such seizure, the petitioner made several representations to the income tax authorities and ultimately, filed the present petition seeking the reliefs noted hereinabove.

3. Mr. S. N. Soparkar, Senior Advocate, learned counsel for the petitioners invited the attention of the court to the additional affidavit dated 25th April, 2015 made on behalf of the petitioner, indicating that subsequently in relation to the assessment year in question, the assessment came to be framed by the concerned Assessing Officer at Varanasi, wherein he had taken note of the fact of seizure by the authorities at Surat, but did not make any addition in respect

of such seized ornaments and accepted the return filed by the petitioner. It was submitted that in the light of the fact that in the assessment order made in the case of the petitioner, no addition has been made in relation to the seized ornaments, the respondent authorities have no longer have any authority to retain the ornaments seized by them.

4. Mr. M. R. Bhatt, Senior Advocate, learned counsel for the respondents submitted that in view of the assessments framed in relation to the assessment years in question, appropriate orders, as may be deemed fit, be passed by the court.

5. From the facts noted hereinabove, it is apparent that the silver ornaments weighing 219.841 KG came to be seized by the respondent authorities in exercise of powers under section 132A of the Income Tax Act, 1961 in the financial year 2011-2012. Thereafter, the assessment came to be framed by the Assessing Officer of the petitioner at Varanasi for assessment year 2012-13, whereby after taking note of such seizure made by the authorities at Surat, the return as filed by the petitioner came to be accepted without making any addition on account of such seizure. In the aforesaid premises, the respondent authorities are no longer authorized to continue with such seizure made by them under section 132A of the Act. Under the circumstances, without entering into the merits of the validity of the authorization issued under section 132A of the Act, this court is of the opinion that in view of the assessment orders made in the case of the petitioner, the respondent authorities can no longer continue with the seizure of the ornaments in question and the same are required to forthwith be returned to the petitioner.

6. For the foregoing reasons, the petition partly succeeds and is, accordingly, allowed to the following extent :

The respondent authorities are directed to forthwith hand over the seized silver ornaments to the petitioner within a period of four weeks from today, in accordance with the provisions of section 132A of the Income Tax Act, 1961.

7. Rule is made absolute accordingly to the aforesaid extent with no order as to costs.

(HARSHA DEVANI, J.)

(A.G.URAIZEE,J)

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