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

% ***Judgment reserved on: 29.01.2025***
Judgment pronounced on: 03.03.2025

\+ W.P.(C) 7741/2022, CM APPL. 23664/2022 (Interim Relief) & CM APPL. 25690/2022 (Addl. Docs.)

M/S KASHISH OPTICS LTD. ...Petitioner

Through: Mr. Puneet Agrawal, Mr. Ketan Jain, Ms. Sakshi Bisht, Ms. Shruti Garg and Mr. Chetan Kumar Shukla, Advs.

versus

THE COMMISSIONER, CGST DELHI WEST & ORS. ...Respondents

Through: Ms. Anushree Narain, SSC along with Mr. Ankit Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. By the present Writ Petition, the Petitioner herein lays challenge to the continued retention of goods by the Respondent, seized on the basis of a search conducted by the Respondents on 22/23 October 2020, pursuant to which a seizure order dated 23.10.2020 came to be issued.

2. The Petitioner seeks the following substantive reliefs:

i. Issue an appropriate writ or order or direction to the Respondents to release the goods seized vide the impugned seizure order dated 23.10.2020 **(Annexure P-5)** to the Petitioner; and/or
ii. Issue an appropriate writ or order or direction to the Respondents to release all the documents and electronic devices resumed as per Annexure-A to the panchnama dated 22/23.10.2020 **(Annexure P-3)** from the registered premises of the Petitioner; and/or
iii. Issue an appropriate writ or order or direction, to quash and set aside the impugned seizure order dated 23.10.2020 **(Annexure P-5);** and/or
iv. Issue any other writ, order or direction in favour of the Petitioner, as this Hon'ble Court may deem fit and proper in the present facts and circumstances of the case, so as to ensure the ends of justice, or else the Petitioner shall suffer irreparably; and/or
v. to grant costs of this Petition;

3. By a detailed order dated 07.01.2025, we had set out therein, the essence of the challenge raised in the present petition and the same reads as follows: -

> "1. The writ petitioner assails the continued seizure of articles pursuant to a panchnama which had come to be drawn on 22/23 October 2020 in connection with search proceedings initiated under the **Central Goods and Services Tax, 2017**. Pursuant to the search, an order of seizure came to be made by the respondents on 23 October 2020. This becomes evident from a perusal of Annexure P-5 and which forms a part of our record.
> 2. The petitioner was ultimately served with a notice stated to be dated 20 October 2021, calling upon it to show cause why the seized articles not be confiscated in terms contemplated under Section 130 of the Act. The challenge which stands mounted in the writ petition proceeds on the following lines.
> 3. Our attention is firstly drawn to Section 67(7) of the Act and which reads as follows: -
>
> "**67. Power of inspection, search and seizure**

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> (7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized: Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.
>
> PROVIDED that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months."

4. It is submitted that goods which are seized under the Act are liable to be returned to the person from whose possession they were taken within six months of seizure. It becomes pertinent to note that in terms of Section 67(2), the seizure of goods is itself predicated upon the formation of an opinion that the goods are liable to be confiscated. In terms of the Proviso to sub-section (7), the period of six months may, on sufficient cause being shown, be extended by the proper officer by a further period not exceeding six months. It is thus contended that the extension of the period during which the goods may remain seized cannot in any eventuality exceed a total period of 12 months. Our attention was also drawn to the provisions comprised in Section 130 of the Act and which relates to the subject of confiscation.

5. Pursuant to the directions issued on this writ petition, the respondents have also placed on our record relevant extracts of their note sheets and from which we gather that a note was prepared on 16 April 2021 proposing the extension of the period of seizure under Section 67(7) by a further period of six months upto 21 October 2021. It is during this period that the notice of confiscation referable to Section 130 came to be issued on 20 October 2021.

6. Learned counsel for the writ petitioner has drawn our attention to the *pari materia* provisions which stand comprised in Sections 110 and 124 of the **Customs Act,**

1962 and to two significant decisions which were handed down by the Supreme Court in connection therewith in **Assistant Collector of Customs v. Charan Das Malhotra**, which was followed by **I.J. Rao, Asst. Collector of Customs and Others. vs. Bibhuti Bhushan Bagh and Another.**

7. In *I.J. Rao*, one of the issues which came to be flagged by the Supreme Court was whether the person from whom the goods had been seized would be entitled to be heard before the original period as contemplated in the statute for seizure and retention of articles could be extended. Dealing with this aspect, the Supreme Court in *I.J Rao*, while placing reliance on its decision in *Charan Das Malhotra*, held: -

> "**9.** It is apparent that goods liable to confiscation may be seized by virtue of Section 110(1) but that those goods cannot be confiscated or penalty imposed without notice, opportunity to represent and to be heard to the owner of the goods or the person on whom penalty is proposed. This notice must be given within six months of the seizure of the goods, as envisaged by Section 110(2) of the Act, and if it is not, the goods must be returned to the person from whom the goods were seized. The proviso to Section 110(2) of the Act allows the period of six months to be extended by the Collector of Customs for a period not exceeding six months on sufficient cause being shown to him in that behalf.
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> **10.** The Appellate Bench of the High Court is of opinion that the decision of the High Court in *Asst. Collector of Customs* v. *Charan Das Malhotra* lays down the correct law and applies to the facts of this case, that there is a duty on the part of the Collector of Customs to act judicially in exercising the power conferred under the proviso to Section 110(2) of the Act and that, therefore, notice should have gone to the owner of the goods before the extension

was ordered under the proviso. It has been held further that the order of extension should have been communicated to the owner and as that was not done the order was ineffective.

xxxx xxxx xxxx

12. In *Charan Das Malhotra* [(1971) 1 SCC 697 : 1971 SCC (Cri) 321 : (1971) 3 SCR 802] the court referred to the consideration that seizure was authorised under Section 110(1) on the mere "reasonable belief" of the officer concerned, that it was an extraordinary power and that therefore Parliament had envisaged a period of six months from the date of seizure for completing an enquiry on whether the goods should be confiscated and that if the enquiry was not completed within that period the goods must be returned. In some cases it is possible that the enquiry requires longer than six months, and accordingly power was conferred on the Collector, an officer superior in rank and also an Appellate Authority under Section 128, to extend the time subject to two conditions, that it did not exceed one year, and that sufficient cause must be shown for such extension. The court observed that the Collector was not expected to propose the extension mechanically or as a matter of routine but only on being satisfied that facts exist which indicate that the investigation could not be completed for bona fide reasons within the time provided in Section 110(2), and that therefore extension of the period has become necessary. The Collector, the court emphasized cannot extend the time unless he is satisfied on facts placed before him that there is sufficient cause necessitating extension, in which case the burden of proof would clearly lie on the customs authorities applying for extension to show that such extension was necessary. Taking these

considerations into record the court held that the words "sufficient cause being shown" required an objective examination of the matter by the Collector. It was pointed out that ordinarily on the expiry of the period of six months from the date of seizure the owner of the goods would be entitled as of right to restoration of the seized goods, and that right could not be defeated without notice to him that an extension was proposed. The court rejected the contention that the continuing investigation would be jeopardised if such notice was given. The court held that the power under the proviso to Section 110(2) was quasi-judicial, at any rate one requiring a judicial approach, and consequently the person from whom the goods were seized was entitled to notice before the period of six months envisaged by Section 110(2) was extended. The point was considered again in *Lokenath Tolaram* v. *B.N. Rangwani* by a Bench of four Judges of this Court and the court referred to the view taken in *Charan Das Malhotra* but it declined to interfere because the appellants in that case had themselves waived notice concerning extension of the time. The court did not specifically give the stamp of approval to the law laid down in *Charan Das Malhotra*.

13. There is no doubt that the words "on sufficient cause being shown" in the proviso to Section 110(2) of the Act indicates that the Collector of Customs must apply his mind to the point whether a case for extending the period of six months is made out. What is envisaged is an objective consideration of the case and a decision to be rendered after considering the material placed before him to justify the request for extension. The Customs Officer concerned who seeks the extension must show good reason for seeking the

extension, and in this behalf he would probably want to establish that the investigation is not complete and it cannot yet be said whether a final order confiscating the goods should be made or not. As more time is required for investigation, he applies for extension of time. The Collector must be satisfied that the investigation is being pursued seriously and that there is need for more time for taking it to its conclusion. The question is whether the person claiming restoration of goods is entitled to notice before time is extended. The right to notice flows not from the mere circumstance that there is a proceeding of a judicial nature, but indeed it goes beyond to the basic reason which gives to the proceeding its character, and that reason is that a right of a person may be affected and there may be prejudice to that right if he is not accorded an opportunity to put forward his case in the proceeding. In other words, the issue is whether there is a right in a person from whose possession goods are seized and which right may be prejudiced or placed in jeopardy unless he is heard in the matter. It cannot be disputed that Section 110 sub-section (2) contemplates either notice (within six months from the date of seizure) to the person from whose possession the goods have been seized in order to determine whether the goods should be confiscated or the restoration of the goods to such person on the expiry of that period. If the notice is not issued in the confiscation proceedings within six months from the date of seizure the person from whose possession the goods have been seized becomes immediately entitled to the return of the goods. It is that right to the immediate restoration of the goods upon the expiry of six months from the date of seizure that is

defeated by the extension of time under the proviso to Section 110(2). When we speak of the right of the person being prejudiced or placed in jeopardy we necessarily envisage some damage or injury or hardship to that right and it becomes necessary to inquire into the nature of such damage or injury or hardship for any case to be set up by such person must indicate the damage or injury or hardship apprehended by such person. In the present case, one possibility is that the person from whose possession the goods have been seized may want to establish the need for immediate possession, having regard to the nature of the goods and the critical conditions then prevailing in the market or that the goods are such as are required urgently to meet an emergency in relation to a vocational or private need, and that any delay in restoration would cause material damage or injury or hardship either by reason of some circumstance special to the person or of market conditions or of any particular quality of requirement for the preservation of the goods. But it will not be open to him to question whether the stage of the investigation, and the need for further investigation, call for an extension of time. It is impossible to conceive that a person from whose possession the goods have been seized with a view to confiscation should be entitled to know and to monitor, how the investigation against him is proceeding, the material collected against him at that stage, and what is the utility of pursuing the investigation further. These are matters of a confidential nature, knowledge of which such person is entitled to only upon the investigation being completed and a decision being taken to issue notice to show cause why the goods should not be confiscated. There can

be no right in any person to be informed midway, during an investigation, of the material collected in the case against him. Consequently, while notice may be necessary to such person to show why time should not be extended he is not entitled to information as to the investigation which is in process. In such circumstances, the right of a person, from whose possession the goods have been seized, to notice of the proposed extension must be conceded, but the opportunity open to him on such notice cannot extend to information concerning the nature and course of the investigation. In that sense, the opportunity which the law can contemplate upon notice to him of the application for extension must be limited by the pragmatic necessities of the case. If these considerations are kept in mind, we have no doubt that notice must issue to the person from whose possession the goods have been seized of the proposal to extend the period of six months. In the normal course, notice must go to such person before the expiry of the original period of six months. It is true that the further period of six months contemplated as the maximum period of extension is a short period but Parliament has contemplated an original period of six months only and when it has fixed upon such period it must be assumed to have taken into consideration that the further detention of the goods can produce damage or injury or hardship to the person from whose possession the goods are seized.

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16. In our opinion, the person from whose possession the goods have been seized is entitled to notice of the proposal before the Collector of Customs for the extension of the original period of six months mentioned in

> Section 110(2) of the Customs Act, and he is entitled to be heard upon such proposal but subject to the restrictions referred to earlier in regard to the need for maintaining confidentiality of the investigation proceedings."

8. It was thus contended that the absence of any notice or opportunity having been provided to the writ petitioner prior to the extension being approved on 16 April 2021, would itself constitute sufficient ground to invalidate the seizure of articles.

9. It was further contended that even the note sheet which is relied upon by the respondents does not refer to any germane material which may have been considered sufficient warranting extension of the period of seizure by a further period of six months. It was also the submission of learned counsel that in fact the seizure notice itself has come to be served after the maximum period of 12 months as is contemplated under Section 67(7) and that the same was communicated to the writ petitioner for the first time under cover of a letter dated 24 March 2022.

10. It is submitted that according to the respondents, the purported notice of confiscation dated 20 October 2021 is stated to have been served upon the writ petitioners by way of affixation. It was in this backdrop that learned counsel invited our attention to the provisions comprised in Section 169 of the Act and submitted that affixation is a mode which can be resorted to only if the other modes of service as contemplated in clauses (a) to (e) of that provision were not possible. Viewed in that light, the petitioner would contend that the confiscation notice would be deemed to have been made only in 2022 and thus clearly beyond the maximum period of 12 months as contemplated under Section 67(7).

11. In order to enable Ms. Narain, learned counsel representing the respondents to address submissions in the aforesaid light, let the writ petition be called again on 20.01.2025."

4. On 29.01.2025, Ms. Narain, learned Senior Standing Counsel

appearing for the Respondents, while replying to the queries raised by this Court and responding to the contentions of the Petitioner, had sought to defend the actions of the Department by submitting that the provisions of Section 110 of the Customs Act, 1962 (hereinafter referred to as "**the Customs Act**") are different from the provisions of Section 67 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "**the CGST Act**") and that, the said two provisions are operating in different fields and in that sense, cannot be held to be *pari materia*.

5. Ms. Narain would further state that the file noting would clearly evidence that there was a "sufficient cause" shown in the said noting which supported the order of seizure as well as the continuation of the same for a further period of six months.

6. It is also the submission of Ms. Narain that the Show Cause Notice (hereinafter referred to as "**SCN**") dated 20.10.2021 issued in terms of Section 67(7), is not barred by time. She reasons that the said notice was served on the very same day that it was issued and that in terms of Section 169 of the CGST Act, since none was available at the registered office premises and after the numerous calls to the Proprietor, Mr. Saket Agarwal, went unanswered, the complete SCN was pasted on the front side of the locked premises and panchnama dated 20.10.2021 was drawn.

ANALYSIS:

7. Section 67 of the CGST Act 2017, as relevant for the present purposes, reads as follows: -

"67. Power of inspection, search and seizure:

(1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

…..

> (6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.
>
> (7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized.
>
> Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.
> ….."

8. Section 110(2) of the Customs Act as it stood at the relevant time is as follows:

> "**110. Seizure of goods, documents and things. —**
> ***
>
> (2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:
>
> Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months."

9. A perusal of the two provisions makes it evident that the two are similarly worded.

10. We are of the belief that the two provisions are *Pari Materia* and the contention of the Respondents that the same cannot be *pari materia* is clearly incorrect.

11. We advert to the first justification sought to be given by Ms. Narain in support of the impugned SCN, *namely*, that the judgment of

the Hon'ble Supreme Court in the matter of **I.J. Rao, Asstt. Collector of Customs & Ors. v. Bibhuti Bhushan Bagh & Another**[1] would not apply in the present case as the same is under the Customs Act, 1962 whereas, the present matter deals with the CGST Act, 2017. She would also contend that the scheme of Section 67 of the CGST Act is materially different from the scheme of Section 110 of the Customs Act as it stood then, and the application of the said judgment, in the present facts and circumstances, would constitute the reading of the said provisions of the Customs Act into the CGST Act. She would thus conclude that the said provisions are not *pari materia*.

12. We do not agree with the contention of Ms. Narain that the provisions of Section 110 of the Customs Act, referred to in the Judgment of *I.J. Rao*, are not *pari materia* with Section 67 of the CGST Act.

13. Both the Acts are fiscal Acts. Seizure of goods and documents is provided for in both the acts. Such seizure is only on the basis of a "reasonable belief". Seizure of goods would have serious repercussions on the person whose goods are so seized. Seizure is for the limited purpose of securing the interest of the concerned authorities to conduct their proceedings.

14. In *I.J Rao*, the Hon'ble Supreme Court has held that upon the expiry of six months, the person whose goods are seized becomes entitled to their return and the said right cannot be sought to be defeated unilaterally and the affected person would be entitled to a notice of the proposal for extension prior to the expiry of six months

[1] I.J. Rao, Asstt. Collector of Customs & Ors. v. Bibhuti Bhushan Bagh & Another, (1989) 3 SCC 202

and is also entitled to be heard on the said proposal, albeit with certain restrictions keeping in mind the statutory entitlement and the larger public concerns.

15. Even assuming the two provisions were not "*pari materia*", the underlying logic and reasoning would clearly apply to the provisions of the CGST Act and the case in hand.

16. The further contention that under Section 67(7) of the CGST Act, no notice of personal hearing is required to be given as the wording of Section 67(7) of the CGST Act is unambiguous in this respect, does not seem to be borne out from the express provisions. In fact, the Section is couched in a manner such as to ensure that the "sufficient cause will have to be shown" to the affected person. "Sufficient cause" cannot mean a reason known only to the concerned officials for extending the period of seizure to the detriment of the affected person, thereby denying him his entitlement to the goods.

17. The Respondents also argue that the judgment in *I.J. Rao* will not apply because of Rule 140 of the CGST Rules, 2017 (hereinafter referred to as "**the Rules**") which, when read with Section 67(7) of the CGST Act, provides for the provisional release of seized goods and that the Petitioner having failed to make an application in this regard, cannot challenge the non-issue of a notice for extending the period of seizure.

18. The fact that Rule 140 of the Rules provides for release on a provisional basis of seized goods does not obliterate the proviso to Section 67(7) of the CGST Act, including the need for showing "sufficient cause" for extending the period of retaining the seized

goods.

19. The argument of the Respondents that the Petitioners have not shown how the retention of the goods would be prejudicial or that they would be diminishing in value, is also incorrect as the Petitioner has clearly stated on various occasions that the said frames of spectacles would go out of fashion and resultantly, they would suffer huge losses. On that count too, Ms. Narain's attempt to distinguish the judgment of *I.J. Rao* from the facts and circumstances of the present case, would fail.

NOTE-SHEET PROVIDES "SUFFICIENT CAUSE" FOR CONTINUED SEIZURE:

20. In the facts of the present case, no notice of extension of the seizure was provided prior to the conclusion of the six-month period. Reliance was instead placed on certain extracts which came to be filed as a consequence of our Order dated 22.08.2023 to contend that the same would constitute compliance of the mandate of "sufficient cause".

21. These extracts are not in the public domain and the Petitioner herein could not have had any opportunity to controvert or reply to the contents of the same. It clearly amounts to a unilateral act on the part of the Respondent by which the Petitioner would stand deprived of its statutory entitlement to the goods and for that reason alone would not satisfy the mandate of Section 67(7) of the CGST Act.

22. The contents of the note-sheet would show that Mr. Saket Aggarwal had co-operated and participated fully in the investigation. What it also shows is that the concerned officer has not recorded the

description of the goods properly and that is not a fault that can be attributable to the Petitioner.

23. What is most pertinent is that the said note sheet prepared by the Inspector and the Superintendent clearly records that:

> "The investigation case files in respect of M/s Kashish Optics (P) Ltd. And its relevant documents have not been properly handed over by Sh. Amit Khatri, Insp. till date i.e. 13.4.2021. On going through the case file, it is found that following relevant documents are not placed opposite in this file, details are as under:-..."

and goes on to record that even the panchnama was not in the file. The said Mr. Saket Agarwal has, in fact, given a complete description of the goods and it is the seizure form that was prepared by the concerned officials which does not record the details.

24. This aspect has also been noticed by the concerned senior official to whom the same was put up along with the Draft SCN and adversely commented upon.

25. The said officer also notes, *inter alia*, that:

> "However scrutiny of the file failed to show any basis of such valuation. Further description of relied upon BPE placed in file is Metal Spectacle Frames (unbranded). However, in Panchnama, they are shown Sunglass frame of various brands/varieties. Thus, their basis appears to be irrelevant and is not the correct basis of valuation of the goods seized."

26. The said officer however gives further reasoning related to COVID-19 which is not found in the note sheet that accompanies the Draft SCN.

27. Clearly, the shoddy performance by the concerned officers in valuing the goods despite the complete cooperation of the Assessee

cannot be "sufficient cause".

28. In any event, when the relevant documents themselves were not made available completely, it is difficult to accept the contention that the same could have formed "sufficient cause" for the purpose of extending the period of seizure.

SCN DATED 20.10.2021 IS NOT BARRED BY LIMITATION:

29. Ms. Narain would further submit that the SCN dated 20.10.2021 is not time-barred in terms of Section 67(7) of the CGST Act, as the said notice was served on the very same day that it was issued. She would further state that no one was present at the registered premises and the Department's calls made to the proprietor of the Petitioner were not answered, resulting in the Department pasting the impugned SCN on the front of locked premises.

30. We do not propose to examine the factual aspect of the contentions as the said SCN is not even impugned herein.

31. In any event, the said SCN relates to the confiscation and not to the extension of seizure. The argument is, thus, not relevant for the present purposes.

32. Nevertheless, confiscation is the result of an investigation that establishes that there has been a contravention of the provisions of the Act. The same cannot be equated to the power of seizure under Section 67 which pertains to the power of the Officer to seize based on a "reason to believe". A notice under Section 130 cannot be equated to the mandate under Section 67(7).

33. For the aforementioned reasons, we allow the Writ Petition and direct that the seized goods as per the stock summary annexed to the

letter dated 17.06.2021 (**Annexure P-6**) be released upon the Petitioner making a deposit of the amount as per the valuation annexed to the letter dated 17.06.2021, with the Respondents.

34. Proceedings, if any, in respect of the alleged violation shall be concluded by the Respondents within a period of six weeks.

35. The Petitioner is also permitted to take photocopies of all documents seized by the Respondents who are also directed to provide copies of all data that may be in electronic form within a period of four weeks from today. The Respondents may make copies of data in the seized electronic devices (Laptop, Mobile Phone, Storage devices, etc.) and release the devices to the Petitioner.

36. In the above terms, the present petition is disposed of along with the pending application(s).

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

MARCH 03, 2025/nd/sm