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W.P.No.27781 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27781 of 2011

and

M.P.Nos.1 and 2 of 2011

D.Naresh Kumar

...Petitioner

Vs

The Deputy Director,
Directorate of Enforcement,
Government of India, Shastri Bhavan,
III Floor, III Block,
No.26, Haddows Road,
Chennai – 600 006.

... Respondent

PRAYER: Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent pertaining to the Adjudication Order No.DD/MAS/28-31/2011(RM) dated 28.07.2011 in File No.T-4/74-77/SZ/C/2002, quash the same and further direct the respondent to issues notice and hear the petitioner before passing any order with regard to confiscation of currency in adjudication proceedings.

For Petitioner : Mr.A.Tamilvanan

For Respondent : Mr.N.Ramesh
Special Public Prosecutor



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ORDER

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2. The order of adjudication was issued in accordance with the provisions of the Foreign Exchange Management Act, 1999 (42 of 1999). In the preamble of the order, the respondent has categorically stated that an appeal against the adjudicatory order shall lie with the Special Director (Appeals) having his office at Commissioner of Income-tax (Appeals -V), Main Building, 2nd Floor, Room No.222, 121, M.G.Road, Nungambakkam, Chennai-34, within 45 days from the date on which the copy of the order made by the adjudicating authority is received and in accordance with provisions of Section 17 of the Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Adjudication Proceedings And Appeal) Rules, 2000).

3. The learned counsel for the petitioner made a submission that the money confiscated belongs to the petitioner and he made a claim for return of property. The adjudicating authority has not considered the facts and circumstances and rejected the claim. The writ petitioner has set out various



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facts and circumstances and those disputed facts cannot be adjudicated in the present writ petition as the criminal cases are also pending against the parties concerned.

4. Perusal of the adjudicatory order reveals that the money was confiscated from the Manager of the petitioner and therefore, opportunity was given to the person from whom, the money was confiscated. Under these circumstances, if at all, the petitioner claims that he is the owner of the money, it is for him to initiate appropriate steps before the authority. Contrarily, this Court cannot issue a direction to provide an opportunity to the writ petitioner in the adjudicatory process, wherein admittedly the money was not confiscated from the petitioner, but from his Manager.

5. The story narrated by the petitioner in detail requires no merit consideration as all those facts are to be established with reference to the documents and evidences including oral evidences.

6. However, the respondent in their counter affidavit stated that the petitioner in his statement dated 24.06.2002 given before the respondent Enforcement Directorate and he interalia while explaining about the amount



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of Rs.49.5 Lakhs, he has categorically stated that he knew Shri Sreenivasan had received a total sum of Rs.49.5 lakhs on 13.05.2002 from 3 persons and the seized a sum of Rs.9 lakhs forms part of the above sum of Rs.49.5 lakhs. Further Shri Rasheeth Khan, Banwarilal Maroo and Jabbar Singh @ Arjun, in their statements given before the respondent Department, have also admitted the payments made by them to Shri Sreenivasan as per the instructions of persons residing in Singapore.

7. The various statements, cases registered and the adjudicatory process would reveal that the facts are to be investigated and a trial is required for the purpose of culling out the truth behind these allegations. However, such an elaborate adjudication cannot be done in a writ proceedings under Article 226 of the Constitution of India and merely based on the affidavit, return of property, which were confiscated by the Enforcement Directorate, cannot be released nor in an adjudicatory process, where the authorities forming an opinion that opportunity is to be given to the person from whom the confiscation is made, should not be interfered with this by this Court in the writ petitions.

8. The learned counsel for the petitioner made a submission that there



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is a provision for appeal and even in the impugned order, it is stated that the petitioner if aggrieved, may file an appeal. If so, it is for the petitioner to prefer an appeal in a prescribed format and complying with the procedures as contemplated.

9. However, the relief sought for in the present writ petition cannot be granted and consequently, the writ petition stands dismissed. No costs. Connected miscellaneous petitions are closed.

26.11.2021

Internet: Yes
Index : Yes
Speaking order : Yes
nti/kak

To

The Deputy Director,
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S.M.SUBRAMANIAM, J.

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