BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.03.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P(MD)No.890 of 2021

Ishthiyaq ... Petitioner

Vs.

1.The Principal Commissioner of Income Tax (Central),
O/o. The Principal Commissioner of Income Tax (Central),
121, M.G.M.Road, Nungambakkam, Chennai - 600 034.

2.The Additional Commissioner of Income Tax,
Central Range, Additional Office Building,
IT Staff Quarters, Meenambalpuram,
Madurai - 625 002.

3.The Assistant Commissioner of Income Tax,
Central Circle, 2, V.P.Rathinasamy Nadar Road,
CR BLDG., BB Kulam, Madurai - 625 002.

4.The Assistant Director of Income Tax (Inv),
Nellai City Centre, Rahmath Nagar,
Tirunelveli 627011.

5.The Inspector of Police,
Alangulam Police Station,
Tirunelveli District.
(In Crime No.328 of 2020) ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in F.No.GHSPM 5479J/ADIT (Inv)/ TNL/2020-21 dated 12.10.2020 passed by the respondent No.4 and quash the same as illegal, consequently directing the respondent No.2 to release the seized cash sum of Rs.34,71,300/- (Rupees thirty four lakh seventy one thousand and three hundred only).

For Petitioner : Mr.S.M.A.Jinnah

For Respondents : Mrs.M.Parameswari,
For Mrs.S.Srimathy,
Standing Counsel for R1 to R4.
Mrs.M.Rajeswari,
Government Advocate for R5.

ORDER

Heard the learned counsel appearing for the writ petitioner, the learned standing counsel for the respondents 1 to 4 and the learned Government Advocate for the fifth respondent.

2.The writ petitioner/Ishthiyaq is a resident of Kayalpattinam. He is said to be running a business entity in the name of style of "Fiya Home Appliances". He had sent his staff namely., Munavarudeen on 15.07.2020 to collect loan amount from Faizal and Peter. After collecting a sum of Rs.33 Lakhs from Faizal and a sum of Rs.1,71,300/- from Peter, Munavarudeen was returning in his two wheeler. He met with an accident and that is how, the cash bag was seized by the fifth respondent. The fifth respondent handed over the same to the fourth respondent. The fourth respondent had deposited the entire amount in a specially created account. The fourth respondent also enquired the writ petitioner and other related persons under Section 131 of the Income Tax Act. Thereafter, the cash had been handed over to the third respondent along with the relevant file. The petitioner has been informed by the impugned communication dated 12.10.2020 about the same. It is this communication that is put to challenge in this writ petition.

3.I am of the view that the impugned communication as such is not open to challenge. This is because in the impugned communication, the procedure for obtaining return of the seized cash has alone been set out in Paragraph No.6. Paragraph No.6 of the impugned communication reads as follows:-

> "6. *The procedure for you to get the seized cash is briefed as below:*
>
> *Your case has been centralised with the Assistant Commissioner of Income Tax (ACIT), Central Circle, Madurai. ACIT, Central Circle, Madurai shall issue a notice for filing of return of income for the financial year 2020-21. After you have filed the return income for the financial year 2020-21, the ACIT, Central Circle, Madurai shall frame the assessment order for the financial year 2020-21. Before framing the assessment order, he shall give you adequate opportunities of hearing to enable you to file any additional evidences. After due assessment procedure, the ACIT, Central Excise, Madurai will decide on the issue of release of the seized cash after obtaining necessary approvals from the Principal Commissioner of Income Tax. You are at liberty to file another application for release of seized cash before the ACIT, Central Circle, Madurai / Additional Commissioner of Income Tax, Central Range, Madurai / Principal Commissioner of Income Tax (Central), Chennai."*

4.The learned standing counsel submitted that if the petitioner and other concerned persons file their returns, the entire issue would be processed and appropriate orders in accordance with law will be passed within a period of four weeks thereafter. The learned counsel for the petitioner states that within a period of four weeks from the date of receipt of a copy of this order, the petitioner as well as the other persons will file their returns before the respective assessing officers. Immediately after receipt of said returns, the respective assessing officers will immediately and without any delay forward the same to the central circle. Thereafter, the competent authority will scrutinize the returns and based on the assessment order to be passed, return the seized amount of the petitioner herein. The entire exercise will be completed within a period of four weeks thereafter.

5.The writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

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+1 CC to M/s.SPL GP (SR-14313[F] dated 30/03/2021)

+1 CC to M/s.S.SRIMATHY, Advocate (SR-14571[F] dated 30/03/2021)

W.P(MD)No.890 of 2021
29.03.2021

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KK(31.03.2021) 4P 8C