IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.09.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.20824, 20825 & 20829 of 2022

V.R.Muthu ... Petitioner in WP.20824 of 2022

V.R.Thendral ... Petitioner in WP.20825 of 2022

V.R.Sathiyam ... Petitioner in WP.20829 of 2022

Vs

1.The Principal Commissioner of Income Tax (Investigation Wing),
Central Circle – 11,
3rd Floor, No.108 Uttamar Gandhi Road,
Nungambakkam, Chennai – 600 034.

2.The Assistant Commissioner of Income Tax,
Central Circle-1,
Income Tax Staff Quarters Campus,
Kulamangalam Main Road,
Meenambalpuram,
Madurai-625 002. ... Respondents in all WPs

PRAYER in WP.No.20824 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to return/release the 2201.715 grams of gold and 3 carats of diamond seized from the petitioner during the search inspection conducted between 17.11.2015 and 19.11.2015.

PRAYER in WP.No.20825 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to return/release the 2700.50 grams of gold seized from the petitioner during the search inspection conducted between 17.11.2015 and 19.11.2015.

PRAYER in WP.No.20829 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to return/release the 4776.190 grams of gold seized from the petitioner during the search inspection conducted between 17.11.2015 and 19.11.2015.

(In all WPs)
For Petitioners : Mr.R.L.Ramani, Senior Counsel
for Mr.B.Raveendran

For Respondents : Mr.ANR.Jayaprathap
Junior Standing Counsel

COMMON ORDER

The prayer in these writ petitions is for mandamus seeking release of gold jewelry seized in the course of search between 17.11.2015 and 19.11.2015.

2.Read this order in conjunction with previous order dated 26.08.2022 reading as follows:

> *'When the matter had come up for admission on 11.08.2022, the following order was passed:*

'Mr.ANR.Jayaprathap, learned Junior Standing Counsel accepts notice for the respondents and seeks some time to obtain instructions and file a counter.

2. The petitioner in all the above Writ Petitions seeks a mandamus directing the respondents to return/release the assets, being 2201.715 grams of gold and 3 carats of diamond (W.P.No.20824 of 2022) 2700.50 grams of gold (W.P.No.20825 of 2022) and 4776.190 grams of gold (W.P.No.20829 of 2022) seized during a search conducted between 17.11.2015 and 19.11.2015.

3. To be noted, the assessments, consequent upon the search, are pending before the Income Tax Appellate Tribunal. The petitioners state that they have paid the entirety of the disputed tax as well as 20% of the penalty imposed under Section 271(1)(c) of the Income Tax Act, 1961.

4. The petitioners have been in communication with the respondents and were directed to furnish bank guarantee for the remaining 80% of penalty as a pre-condition for release of goods, that has also been furnished by the petitioners, as may be seen from letter dated 04.01.2022 issued by the HDFC Bank.

5. In light of the aforesaid narration, nothing seems to stand in the way of the respondents releasing the assets.

6. List on 26.08.2022 at the end of admission list. Counter/written instructions by then with an advance copy served upon the petitioners.'

2.When the matter was called in the Forenoon session, the respondents had nothing fruitful to say, evidently, there had been no follow up as required pursuant to order dated 11.08.2022, it was thus passed over to the Afternoon session. When called now, the learned Junior Standing Counsel states that there has been a de-notification of the files of the petitioner on 18.01.2022

3.Thereafter, there is a communication dated 02.02.2022, which is internal between the office of the Principal Commissioner of Income Tax, Central-2, an Income Tax Officer Headquarters. The former refers to the request for release of jewelery and the condition of producing bank guarantee, and further records that the bank guarantee has been produced from HDFC Bank, Virudhunagar on 27.01.2022.

4.These two letters do not improve the position as recorded by this Court on 11.08.2022. Thus, I am unable to make out why they have been placed before me now. The third communication is an e-mail, which has been received at 01.56 p.m. today to say that the seized jewelery will be released on production of bank guarantee. Admittedly, the Department is already in possession of a bank guarantee that has been furnished on 04.01.2022. The assessee thus cannot be asked to produce a second bank guarantee, till such time the first one was returned. This ought to have been done prior to the date of hearing today, as order dated 11.08.2022 clearly records both what is transpired in the matter as well as what is expected from the respondents.

5.The bank guarantee will be returned to the petitioner, fresh bank guarantee will be solicited and furnished by petitioner and based on compliance on the aforesaid from the petitioner, the seized assets will be released prior to the next date of hearing, after resolving the discrepancies, if any, in regard on the quantity of the seized gold.

6.List on 27.09.2022.'

3.Mr.R.L.Ramani, learned Senior Counsel for Mr.B.Raveendran, learned counsel appearing for the petitioners would submit that the gold has been released on 26.09.2022 and has been received by V.V.V.R.Thendral on behalf of himself and other assessees in the group. A copy of the order dated 26.09.2022 is placed on file. With this, the prayers in these writ petitions are achieved.

4.The learned Senior Counsel would raise a grievance in respect of the value of the bank guarantee that has been obtained by the respondents stating that the value is excess.

5.Per contra, learned Standing Counsel would submit that the value would cover other arrears as well. This being a question of fact is best left to the parties, and if the petitioners are so aggrieved, they are at liberty to approach the Assessing Authority/Appellate Authority before whom rectification petitions/appeals are stated to be pending setting out their grievances.

6.These writ petitions are closed. No costs.

28.09.2022

vs
Index : Yes/No
Speaking Order/Non-speaking order
To
1.The Principal Commissioner of Income Tax (Investigation Wing),
Central Circle – 11,
3rd Floor, No.108 Uttamar Gandhi Road,
Nungambakkam, Chennai – 600 034.

2.The Assistant Commissioner of Income Tax,
Central Circle-1,
Income Tax Staff Quarters Campus,
Kulamangalam Main Road,
Meenambalpuram, Madurai-625 002.

DR.ANITA SUMANTH, J.

vs

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