THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE Mr. JUSTICE S. ANANDA REDDY

WRIT PETITION No.22467 OF 2005

DATED: 17-11-2005

Between

M/s. Kiran Jewellers, a proprietary concern,

Rep. by its Proprietor, Mr. Kiran Jain,

S/o. Kishore Mal Jain, aged 36 years,

Registered office at 22, Rashtradut Press Building,

Chameliwala Market, M.I. Road,

Behind Silver Land, Jaipur, Rajasthan.

.. Petitioner

AND

The Assistant Director of Income Tax

(Investigation), Unit-II (1), Hyderabad

& 3 others

.. Respondents

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WRIT PETITION No.22467 OF 2005

ORDER: (Per Hon'ble Mr. Justice B. Sudershan Reddy)

The petitioner prays for issuance of Writ of *Mandamus* declaring the seizure of 21.8 Kilograms of gold and withdrawal of a sum of Rs.20.00 lakhs from the petitioner's bank, HDFC Bank, as being contrary to Section 132(1) of the Income Tax Act, 1961. The petitioner, accordingly, prays for issue of consequential direction directing the respondents to forthwith release the seized gold and refund the amount of Rs.20.00 lakhs seized from the HDFC Bank with interest.

Shorn of all the details, Sri D. Prakash Reddy, learned Senior Counsel appearing on behalf of the petitioner, submitted that the seized gold forms part of the
stock-in-trade, which cannot be seized, even if it is unaccounted. Learned Senior Counsel placed reliance upon proviso to Section 132 (1) of the Act, which mandates that bullion, jewellery or other valuable article or thing are being stock-in-trade of the business, found as a result of search, shall not be seized but the authorized officer shall make a note or inventory of such stock-in-trade.

A detailed counter affidavit has been filed by the

3rd respondent-Deputy Director of Income Tax (Investigation), Unit-I (3), Hyderabad, wherein, it is explained that there are severe and extreme contradictories between the averments made by Manoj Jain of M/s. Siddhi Jewellers, Hyderabad, from whom the gold has been seized, and Kishoremal B. Jain of M/s. Kiran Jewellers (writ petitioner herein) with regard to their business dealings, sales, purchases, receipts, deposits in Bank and stock-in-trade. It is further stated that the entire gamut of the transactions taking place between the petitioner, Manoj Jain, M/s. Kiran Jewellers and M/s. Siddhi Jewellers, appears to be a large scale money-laundering operation, with no record of persons depositing cash in the on-line bank accounts of M/s. Kiran Jewellers both at HDFC Bank and Andhra Bank. It is stated that under the circumstances, the Department had the reasons to believe that the bullion was the unexplained investment and a resultant of this large scale money-laundering in the name of gold bullion trade, and Manoj Jain from whom the gold was seized was a conduit and agent of M/s. Siddhi Jewellers, Hyderabad.

We have elaborately heard the learned senior counsel appearing on behalf of the petitioner as well as the learned senior counsel appearing on behalf of the respondents and perused the material available on record.

In our considered opinion, it would be premature to express any opinion, at this stage, as to whether the seized gold may have to be treated as stock-in-trade. Each of the assertion made by the petitioner in the affidavit filed in support of the writ petition is put in issue by the respondents. Number of disputed questions of facts arises for consideration, which cannot be satisfactorily resolved in a proceeding under Article 226 of the Constitution of India.

We are of the considered opinion that it is eminently a fit case, where a regular enquiry has to be held for the purpose of determining as to whether the seized gold forms part of the stock-in-trade of the petitioner. Interest of justice requires to refuse the relief, as prayed for, by the petitioner, at this stage.

We, accordingly, reject the contention urged by the learned senior counsel for the petitioner and express no opinion as to whether the seized gold forms part of the
stock-in-trade. It could be said that there is no material,
at least, *prima facie,* to arrive at the conclusion that the seized gold does not form part of stock-in-trade. Any interference by this Court, at this stage, may create an irreversible situation, for which purposes, no writ, ordinarily, lies.

However, having regard to the facts and circumstances of the case, we consider it appropriate to direct completion of the enquiry, as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order. There shall be an order accordingly.

With the aforesaid limited direction, the Writ Petition shall stand dismissed. No order as to costs.

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B. SUDERSHAN REDDY, J

Date:17-11-2005

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S. ANANDA REDDY, J

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