IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.18529 of 2015
and M.P.No.1 of 2015

M/s. ICEVAR AGENCIES [Petitioner]
Rep. by its Partner
No.5 Venkatachalapuram Teachers Colony
Udumalpet Road Pollachi.

Vs

Commercial Tax Officer
Enforcement Wing Udumalpet
Coimbatore District. [Respondent]

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of mandamus to direct the respondent to refund the taxes collected by the Enforcement Wing Officials at the time of inspection of the business place on 26.02.2015 as the taxes collected are without issuance of any demand notice and without jurisdiction and by violating the principles of natural justice.

For Petitioner : Mr.C.Baktha Siromoni

For Respondent : Mr.V.Haribabu, AGP (Taxes)

O R D E R

Heard the learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the main writ petition itself is taken up for disposal.

2. This writ petition has been filed by M/s ICEVAR AGENCIES, represented by its Partner to direct the respondent to refund the taxes collected by the Enforcement Wing Officials at the time of inspection of the business place on 26.02.2015, as the taxes collected are without issuance of any demand notice, without jurisdiction and by violating the principles of natural justice.

3. The petitioner, being the sellers of packaged drinking water and soft drinks, registered themselves as a dealer on the files of the Assistant Commissioner (CT), Pollachi (East) Circle, Coimbatore Division having TIN No.33862262871 and CST Registration No.976172. They are filing the monthly returns every month electronically under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred as TNVAT Act) and paying taxes promptly. While that being the case, the Enforcement Wing Officials of the Commercial Taxes Department have inspected the place of business of the petitioner on 26.02.2015. At that time, there was no business activities and the inspecting officials have called for the records relating to the previous years viz., 2011-12 to 2014-15. On verification of the records, it was alleged that the local dealers from whom the petitioner purchased the soft drinks, have not paid taxes promptly, though they have issued bills to others and for the said offence committed and for non payment of tax by the vendors, the Inspecting officials have alleged suppression of sales by the petitioner and collected four cheques for the tax amounting to Rs.8,84,658/- at the time of inspection, without any assessment or demand. It is the contention of the petitioner that no sales tax can be collected without passing an assessment order and only by issuing notice tax can be demanded and even if taxes are levied by the assessing authority, such demand can be collected only after 30 days after the service of assessment order. Hence, the petitioner is before this Court.

4. The learned counsel for the petitioner would submit that the inspecting authorities have the power only to conduct inspection and collection of tax vests only with the assessing authority. According to him, the Enforcement Wing Officials by exceeding their powers collected the tax, which is illegal. The learned counsel for the petitioner also pointed out that the cheques forcibly collected from the petitioner were also deposited and out of the four cheques, three cheques got dishonoured for want of funds. It is his further submission that tax can be demanded only after passing an assessment order. But, without any assessment order and demand notice, the Enforcement Wing Officials have collected the cheques and hence the learned counsel for the petitioner submitted that the direction sought for can be granted.

5. In support of his submissions, the learned counsel for the petitioner has placed reliance on the decision of this Court rendered in W.P.No.31196 of 2014 dated 05.12.2014 in the case of M/s Naveen Cotton Mill Private Limited vs. The Commercial Tax Officer, Pollachi, wherein this Court, following the decision rendered in Outdoor Advertising Services vs. Deputy Commercial Tax Officer (Enforcement) in W.P.No.29341 of 2005 dated 10.09.2009, directed the Enforcement Officer therein to return the cheques collected from the petitioner therein, within a period of two days from the date of receipt of a copy of that order. It was also made clear that the direction so issued will not prevent the assessing authority from exercising his

powers to assess in accordance with law, under the provisions of the TNVAT Act.

6. On instructions, the learned Additional Government Pleader (Taxes) submitted that the three cheques which were collected by the Enforcement Wing will be returned to the petitioner.

7. Following the order passed by this Court in identical circumstances in W.P.No.31196 of 2014 dated 05.12.2014 cited supra and recording the submissions made by the learned Additional Government Pleader (Taxes) that the cheques which were collected by the Enforcement Wing will be returned to the petitioner, this writ petition is disposed of. It is open to the Enforcement Wing Officer to place all the facts and circumstances of the case with his report before the Assessing authority, who shall independently apply his mind and proceed further for passing the necessary assessment order.

No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AD I)

//True Copy//

Sub Assistant Registrar

To

Commercial Tax Officer
Enforcement Wing Udumalpet
Coimbatore District.

+1cc to Mr.C.Bakthasiromoni, Advocate, S.R.No.40330
+1cc to The special Government Pleader, Advocate S.R.No.40699

W.P.No.18529 of 2015

rj[co]
srg 19.08.2015