IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.23013 of 2015

M/S.Saraswathi Udyog India Ltd [Petitioner]
Rep.by its Executive Director - B. Anandhan
No.32 Thirunagar Colony Erode - 638 003 .
Erode District.

Vs

1 The Assist Commissioner (CT)
Park Road Circle Erode.

2 The Commercial Tax Officer (Enforcement)BTPS
Office of the Joint Commissioner (CT) (Enf.)
Salem Division, Salem

[Respondents]

Petition filed under Article 226 of the Constitution of India to issue a Writ of mandamus directing the 1st Respondent to refund an amount of Rs.7 28 317/- forcibly collected vide Cheque bearing No.22335/12.04.2012 drawn on City Union Bank Erode from the petitioner at the time of inspection from 11.04.2012 to 12.04.2012 by the officials of the 2nd Respondent as per the representation made by the petitioner dated 23.07.2015.

For Petitioner : Ms.R.Hemalatha
For Respondents : Mr.V.Haribabu,
Additional Government Pleader (T)

WEB COPY

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 respondents and with their consent, the main writ petition is taken up for disposal.

2. The petitioner has come forward with this writ petition seeking a writ of mandamus directing the 1st Respondent to refund an amount of Rs.7,28,317/- forcibly collected vide Cheque bearing

https://hcservices.ecourts.gov.in/hcservices/

No.22335/12.04.2012 drawn on City Union Bank, Erode, from the petitioner at the time of inspection from 11.04.2012 to 12.04.2012 by the officials of the 2nd Respondent, as per the representation made by the petitioner dated 23.07.2015.

3.1 The petitioner are the manufacturers of Duplex Paper Boards and assessee on the files of the 1st respondent in TIN 33812860758 & CST No.601354. According to the learned counsel for the petitioner, the Enforcement Wing Officials have inspected the petitioner's business premises on 11.04.2012 and 12.04.2012 and noticed certain discrepancies. Further, according to the learned counsel for the petitioner, during the course of inspection, the Enforcement Wing Officials have forcibly collected a cheque No.022335 dated 12.04.2012 for Rs.7,28,317/-, drawn on City Union Bank, Salem, towards interest.

3.2 It is the contention of the learned counsel for the petitioner that the 2nd respondent has no jurisdiction to direct any payment of taxes without there being any order of assessment by the 1st respondent, who is the jurisdictional assessing authority. Further, according to her, when the 2nd respondent is not the assessing authority, the collection of cheque without any demand is illegal.

3.3 That apart, according to the learned counsel for the petitioner, section 64(4) of the TNVAT Act, does not provide scope for any collection of taxes and the powers of the audit officials are confined to verification of books of accounts and nothing more. But, as far as the present case is concerned, the Enforcement Wing Officials, on the ground of safe guarding the interest of the revenue, forcibly collected a cheque for a sum of Rs.7,28,317/- without any liability and without there being any assessment order.

3.4 Hence, according to the learned counsel for the petitioner, the petitioner, has made a representation dated 23.07.2015 requesting the 1st respondent to return the amount which was forcibly collected by the 2nd respondent at the time of inspection. Since the amount was not refunded, the petitioner is before this Court.

4. Learned counsel for the respondents submitted that the cheque was collected towards the arrears on the basis of the monthly returns filed. But, he is not in a position to lay his hands with regard to the assessment order passed and any adjustment of tax made subsequent to the collection of the said cheque amount from the petitioner.

5. This Court has considered the submissions made by the learned counsel on either side and perused the materials available on record.

6. Admittedly, the representation of the petitioner dated 23.07.2015 for refund of the said amount is pending as on date. Hence, without going into the merits of the matter, this writ petition is disposed of by directing the 1st respondent to pass orders on the representation of the petitioner dated 23.07.2015, on merits

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

rg
To
1 The Assist Commissioner (CT)
Park Road Circle Erode.

2 The Commercial Tax Officer (Enforcement)BTPS
Office of the Joint Commissioner (CT) (Enf.)
Salem Division, Salem.

1 cc to M/s.R.Hemalatha, Advocate Sr.No.46618
1 cc to Government Pleader.Sr.No.416819

W.P.No.23013 of 2015

nm(co)
pmk.16.9.2015

WEB COPY