IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.34484 of 2015

M/s.Wood 'n' Kraft represented by Proprietrix
Coimbatore .. Petitioner

Vs

1.The Assistant Commissioner (Enforcement), Coimbatore

2.The Joint Commissioner (CT) (Enforcement)
Coimbatore

3.The Assistant Commissioner (C.T)
NH Road Assessment Circle, Coimbatore .. Respondents

Prayer:- This Writ Petition is filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the 1st Respondent to return the cheques Nos.657933 to 657935 and 657937 to 657939 for a sum of Rs.10 lakhs, drawn on Indian Bank, Coimbatore, forcibly collected during the inspection conducted on 23.09.2015 by the 1st Respondent.

For Petitioner : Mrs.Aparna Nandakumar

For Respondents : Mr.S.Kanmani Annamalai, Additional Government Pleader

ORDER

By consent of the learned counsel on either side, this Writ Petition is taken up for final disposal.

2. In this Writ Petition, the Petitioner seeks for a direction to the 1st Respondent to return the Cheque Nos.657933 to 657935 and 657937 to 657939 for a sum of Rs.10 lakhs, drawn on Indian Bank, Coimbatore, forcibly collected by the 1st Respondent from the Petitioner at the time of inspection on 23.09.2015.

3. The Petitioner is engaged in the business of wooden furniture and goods and a registered dealer on the file of the 3rd Respondent under the Tamil Nadu Value Added Tax Act, 2006 and Central

Sales Tax Act, 1956. The 1st Respondent Officials conducted an inspection on 23.09.2015 in the business premises of the Petitioner. The 1st Respondent alleged that on inspection, stock discrepancies and sales suppressions were found. Hence, after completion of the inspection, the 1st Respondent obtained a letter dated 30.9.2015 from the Petitioner, agreeing to pay the tax dues, pursuant to which, 1st Respondent officials forcibly collected Cheque Nos.657933 to 657935 and 657937 to 657939 for a sum of Rs.10 lakhs, drawn on Indian Bank, Coimbatore, from the Petitioner towards the tax due. Hence, this Writ Petition has been filed.

4. The learned counsel for the Petitioner has contended that the 1st Respondent has no jurisdiction to direct any payment of taxes, without even any order of assessment or demand thereof and that when the 1st Respondent is not the assessing authority and has no power to levy tax, the collection of tax by way of cheques in advance, without any assessment order or demand is illegal and hence, prayed for return of the cheques in question.

5. The learned Additional Government Pleader for the Respondents, who took notice for the Respondents, on instructions, submitted that the cheques in question are not cleared so far. Further, he also fairly submitted that without making an order of assessment or demand, the cheques in question were collected from the Petitioner.

6. This Court heard the learned counsel on either side and considered their submissions carefully.

7. The issue involved in this Writ Petition is squarely covered by various orders of this Court, viz. (1) order dated 5.11.1993 in WP.No.16700 of 2003, (2) order dated 9.4.2009 in WP.4034 of 2009, (3) order dated 10.9.2009 in WP.29341 of 2005 and (4) order dated 25.01.2011 in WP.No.212 of 2011, wherein, in similar circumstances, this Court ordered for return of the cheque.

8. Admittedly, in the case on hand, at the time of inspection, the cheques in question have forcibly been collected by the 1$^{st}$ Respondent Officials, for the alleged tax due, without following the formalities prescribed under law and even without making an order of assessment or demand by the Assessing Authority, after giving an opportunity to the Petitioner. Further, the 1st Respondent has no jurisdiction, at the time of inspection, to demand or collect cheque towards tax due in advance, without a proper assessment or demand and also no power to levy any tax or quantify, without even calling for the books of accounts or without even verifying the returns and the books of the Petitioner. The authority to collect the tax lies only with the Assessing Authority and not with the Enforcement Wing Officials. Hence, it goes without saying that the action of the 1st Respondent Officials in collecting the cheques in question for the tax dues in advance, without an assessment or demand is illegal and accordingly, a direction has to be necessarily issued to the 1st Respondent to return the cheques in question.

9. In view of the above said reasons and following the orders of this court made in similar circumstances as stated above, the Respondents are directed to return the Cheque Nos.657933 to 657935 and 657937 to 657939 in question to the Petitioner, within a period of two weeks from the date of receipt of a copy of this order. No costs. However, it is made clear that the said direction for return of the cheques in question does not mean that it is not open to the Respondent Department to assess the Petitioner to tax afresh on the materials detected during the course of inspection, after following the procedures contemplated under law.

10. With the above directions, this Writ Petition is disposed of. No costs.
Srcm

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub-Assistant Registrar

To:

1.The Assistant Commissioner (Enforcement), Coimbatore

2.The Joint Commissioner (CT) (Enforcement), Coimbatore

3.The Assistant Commissioner(CT)
N.H.Road, Assessment Circle,
Coimbatore

+1 C.C. To M/S.Aparna Nandakumar, Advocate in SR.NO.63477

+1 C.C. To Special Government Pleader (Taxes), in SR.NO.63484

W.P.No.34484 of 2015

SV(CO)
sd : 14/12/2015