IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.11.2015
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.35533 and 35534 of 2015
and
M.P.Nos.1 of 2015

Tvl.M.Basheer Hydraulic Sales Services
Represented by its Proprietor
M.Basheer
No.43/G-4 Pavithra Auto Nagar
Sankari Road Tiruchengode ...Petitioner in WP.NO 35533/15

M/s.B.H.S.Hydraulic
Represented by its Partner Sharmeela Bhanu
No.21/1-3 Palani Andavar Koil Thottam
Seetharampalayam Post Tiruchengode ..Petitioner in WP.35534/15

Vs

1 The Commercial Tax Officer
(Enforcement) Namakkal.

2 The Assistant Commissioner(CT)
Tiruchengode (Town) Assessment Circle
Tiruchengode [Respondents in both Petitions

Petition No.35533/15 filed under Article 226 of the Constitution of India to issue a Writ of mandamus directing the 1st and 2nd respondents to arrange to return back the cheque bearing nos. 147162 to 147165 dated 31.10.2015 for a value of Rs.52,54,722/- issued by Tamil Nadu Merchantile Bank Tiruchengode collected on the spot by the 1st respondent on 16.10.2015 in the absence of order of assessment and consequential demand and contrary to the principle laid down by this Honourable Court in the judgment reported in 87 STC 513 (M/s.Hotel Blue Nile Vs. State of Tamil Nadu).

Petition No.35534/15 filed under Article 226 of the Constitution of India to issue a Writ of mandamus the 1st and 2nd respondents to arrange to return back the cheque bearing no.

147162 dated 31.10.2015 for a value of Rs.2,11,224-00 issued by Tamil Nadu Merchantile Bank Tiruchengode collected on the spot by the 1st respondent on 16.10.2015 in the absence of order of assessment and consequential demand and contrary to the principle laid down by this Honourable Court in the judgment reported in 87 STC 513 (M/s.Hotel Blue Nile Vs. State of Tamil Nadu).

For Petitioners : Mr.R.Senniyappan

For Respondents : Mr.S.Manoharan Sundaram
Addl. Govt. Pleader (T) for R1 & R2

COMMON ORDER

Seeking a direction to the respondents 1 and 2 to return the cheques bearing Nos.147162 to 147165 dated 31.10.2015 for a value of Rs.52,54,722-00 in respect of the petitioner in W.P.No.35533 of 2015 and cheque bearing Nos. 147162 dated 31.10.2015 for a value of Rs.2,11,224-00 in respect of the petitioner in W.P.No.35534 of 2015 issued by Tamil Nadu Merchantile Bank, Tiruchengode, the present writ petitions have been filed.

2.The petitioners are the manufacturers of hydraulic rig mounting and made sales to the customers and thereby collected the tax amount at the rate of 5% as per the statutory entry 138 of Part B to I Schedule t the TNVAT Act, 2006 and paid to the 2nd respondent every month along with the monthly returns in Form I. While so, on 15.03.2015, the respondents 1 and 2 visited the petitioners premises and conducted surprise inspection. Based on the inspection report, the respondents 1 and 2 arrived at a total tax demand of Rs.52,54,722/- and Rs.2,11,224/- respectively. According to the petitioners, the respondents 1 and 2 have no jurisdiction to assess the petitioners and collect the tax from the petitioners by way of cheques during the course of inspection. Hence the petitioner is before this Court.

3.Heard the learned counsel for the petitioners and the learned Additional Government Pleader appearing for the respondents 1 and 2.

4.Learned counsel for the petitioners would submit that the issue involved in these writ petitions is covered by the decision of this Court in M/s.Astek Electricals and Controls Vs. The Assistant Commissioner (CT), The Commercial Tax Officer Enforcement and The Branch Manager, Canara Bank ((2014) 67 VST 321 (Mad.) and prays for allowing the writ petition.

5.This Court time and again held that there is no power vested with the enforcement wing authorities to compel the petitioners to handover the cheques and despite the same, they are collecting cheques. As rightly submitted by the learned counsel for the petitioners, the issue raised in the writ petitions is squarely covered by the above decision of this Court.

6.Following the decision in M/s.Astek Electricals and Controls's case (cited supra), these writ petitions are allowed and the respondents 1 and 2 are directed to return the nos. 147162 to 147165 dated 31.10.2015 for a value of Rs.52,54,722 and cheque bearing No.147162 dated 31.10.2015 for a value of Rs.2,11,224/-respectively to the petitioners forthwith. It is always open to the assessing authority to pass appropriate orders in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1 The Commercial Tax Officer
(Enforcement) Namakkal.

2 The Assistant Commissioner(CT)
Tiruchengode (Town) Assessment Circle
Tiruchengode

+1 cc to Mr.R.Senniappan Advocate sr.60817
+1 cc to Special Government Pleader sr.60908

aa05/11/2015