IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.37029 of 2015

M/s.Elite Furniture Mart
Coimbatore
Petitioner

Vs

1.The Assistant Commissioner (CT)
NH Road Assessment Circle, Coimbatore

2.The Commercial Tax Officer (Enforcement)
Group VI, Coimbatore
Respondent

Prayer:- This Writ Petition is filed to issue a Writ of Mandamus to direct the 1st Respondent to refund an amount of Rs.1,33,440/- forcibly collected vide Cheque No.006616, dated 28.09.2015 drawn on HDFC Bank, RS Puram Branch, Coimbatore from the Petitioner at the time of inspection on 23.09.2015 by the officials of the 2nd Respondent, as per the representation made by the Petitioner dated 25.10.2015.

For Petitioner : Ms.R.Hemalatha

For Respondent : Mr.S.Kanmani Annamalai, AGP

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 refund an amount of Rs.1,33,440/- forcibly collected vide Cheque No.006616, dated 28.09.2015 drawn on HDFC Bank, RS Puram Branch, Coimbatore from the Petitioner at the time of inspection on 23.09.2015 by the officials of the 2nd Respondent, as per the representation made by the Petitioner dated 25.10.2015.

3. The Petitioner is engaged in the business of wood and steel furniture and an assessee on the file of the 1st Respondent. On 23.9.2015, the 2nd Respondent along with his officials conducted an inspection in the business premises of the Petitioner and conducted an audit under Section 65 of the Tamil Nadu Value Added Tax Act, 2006 and the inspection

was completed on 28.09.2015. After completion of the inspection, the 2nd Respondent officials forcibly collected a Cheque No.006616, dated 28.09.2015 for a sum of Rs.1,33,440/- drawn on HDFC Bank in favour of the 1st Respondent towards the tax due. The Petitioner made a representation dated 25.10.2015, requesting the 1st Respondent to return the amount collected by the said cheque, citing various authorities of this Court. However, the 1st Respondent has not considered the same. Hence, this Writ Petition has been filed.

4. The learned counsel for the Petitioner has contended that the 2nd Respondent has no jurisdiction to direct any payment of taxes, without even any order of assessment or demand thereof by the 1st Respondent and that when the 2nd Respondent is not the assessing authority and has no power to levy tax, the collection of tax by way of cheque in advance, without any assessment order or demand is illegal and hence, prayed for return of the cheque in question.

5. The learned Additional Government Pleader for the Respondents, who took notice for the Respondents, on instructions, submitted that cheque in question is not cleared so far and there is no question of refund, as wrongly claimed by the Petitioner in their representation dated 25.10.2015. Further, he also fairly submitted that without making an order of assessment or demand, the cheque in question was 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 cheque in question has forcibly been collected by the 2nd 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 1st Respondent, after giving an opportunity to the Petitioner. Further, the 2nd 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. Hence, it goes without saying that the action of the 2nd Respondent Officials in collecting the cheque in question for the tax dues, without an assessment or demand is illegal and accordingly, a

direction has to be necessarily issued to the 1st Respondent to return the cheque in question.

10. 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 No.006616, dated 28.9.2015 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 cheque 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.

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

Sd/-
Asst.Registrar (CS III )

/true copy/

Sub Asst. Registrar

Srcm

To:

1.The Assistant Commissioner (CT), NH Road Assessment Circle, Coimbatore

2.The Commercial Tax Officer (Enforcement), Group VI, Coimbatore
+1 cc to kMs.R.Hemalatha, Advocate, sr.64282
+1 cc to Special Government Pleader(Taxes), sr.64775

WP.No.37029 of 2015

kgk co
kra 14.12.2015