BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :05.10.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P(MD).No.17628 of 2015

Sri Gnani Traders,
Represented by its Proprietor Thiru T.Muruganantham
... Petitioner

Vs.

1. Commercial Tax Officer(CT)-IV,
   Sivakasi - 626 189,
   Viruthunagar District.

2. The Commercial Tax Officer(Enf),
   Enforcement Group,
   Viruthunagar District. ... Respondents

PRAYER:This Writ Petition has been filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the first and second respondents to refund or return the advance tax and compounding fees of Rs.9,92,538/- collected from the petitioner during the course of inspection on 22.09.2015 by cheque

Bank Name	Cheque No dt.	Amount
HDFC, Sivakasi	000051/22-9-15	Rs.3,00,000-00
-do-	000052/22-9-15	Rs.3,00,000-00
-do-	000053/22-9-15	Rs.3,90,528-00
-do-	000054/22-9-15	Rs. 2,000-00
Total		Rs.9,92,528-00

For petitioner : Mr.A.Mujibur Rahman
For Respondents : Mr.R.Karthikeyan,
Additional Government Pleader

ORDER

The Writ Petition has been filed praying for a Writ of Mandamus directing the first and second respondents to refund or return the advance tax and compounding fees of Rs.9,92,538/- collected from the petitioner during the course of inspection on 22.09.2015

2. The case of the petitioner is that the petitioner is a registered dealer under TN VAT Act in the book of the Commercial

Tax Officer(CT) -IV, Sivakasi and the TIN number of the petitioner is 33226022555 and the CST number is 835534. The petitioner is a Trader in old iron and paper waste. The petitioner purchases goods within the State and from outside the State and sells them in Tamil Nadu and other States. While the matter stood thus, on 22.09.2015 the second respondent inspected the premises of the petitioner and conducted VAT audit. During the course of inspection, the second respondent has pointed out certain defects. Further, the second respondent has collected a sum of Rs.9,92,538/- including compounding fee of Rs.2,000/- by way of cheque for the non-maintenance of stock register, as follows:

Bank Name	Cheque No dt.	Amount
HDFC,Sivakasi	000051/22-9-15	Rs.3,00,000-00
-do-	000052/22-9-15	Rs.3,00,000-00
-do-	000053/22-9-15	Rs.3,90,528-00
-do-	000054/22-9-15	Rs. 2,000-00
	Total	Rs.9,92,528-00

3. It is the further case of the petitioner that the action of the first and second respondents is against principles of natural justice, illegal and arbitrary. The advance tax and the collection of the compounding fee collected at the spot of survey is against the dictum laid down by this Court in various judgments and hence, the petitioner has come forward with the present Writ Petition seeking for a direction to the first and second respondents to refund or return the advance tax and compounding fees of Rs.9,92,538/- collected from the petitioner during the course of inspection and for that purpose, the learned counsel for the petitioner has relied on the order of this Court in W.P(MD) No.14814 of 2015, dated 19.08.2015 (Tvl. Raaghavendira Paper Mart, Represented by its Proprietor vs. The Commissioner of Commercial Taxes and two others), wherein it has been held as follows:

> *3. As rightly pointed out by the learned counsel for the petitioner, the decisions of this Court in the aforesaid Writ Petitions are squarely applicable to the case on hand. Therefore, following the dictum laid down in the aforesaid decisions made in W.P(MD)No.8166 of 2012, dated 29.03.2012 and W.P(mD)No.6672 of 2013, dated 18.04.2013, the Writ Petition is liable to be allowed.*
>
> *In the result, the Writ Petition is allowed and the respondents 2 and 3 are directed to refund the advance tax of Rs.1,68,636/- and compounding fee of Rs.2,000/-, collected from the petitioner during the course of inspection on 03.08.2015 within a period of two weeks from the date of receipt of a copy of this order.*

4. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents and perused the judgments relied on by the learned counsel for the petitioner.

5. Considering the submission made by the learned counsel for the petitioner and by following the dictum laid down by this Court in various judgments in similar issue, this Court is constrained to pass the following order.

The Writ Petition is allowed and the second respondent is directed to refund the advance tax and compounding fees of Rs.9,92,538/- collected from the petitioner during the course of inspection on 22.09.2015, within a period of two weeks from the date of receipt of a copy of this order. No Costs.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. Commercial Tax Officer(CT)-IV,
   Sivakasi - 626 189,
   Viruthunagar District.

2. The Commercial Tax Officer(Enf),
   Enforcement Group,
   Viruthunagar District.

+ 1 CC TO MR.A.S.MUJIBUR RAHMAN, ADVOCATE IN SR NO. 58589
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR NO. 58606

PM
TE/AAL-MPA/SAR-II 16/10/2015 3P/5C

W.P(MD).No.17628 of 2015
05.10.2015