BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **10.03.2015**

CORAM:
THE HONOURABLE MR.JUSTICE **B.RAJENDRAN**
W.P.(MD)Nos.2929 and 2930 of 2015
and
M.P.Nos.1 and 1 of 2015

A.Shaheela,
Proprietrix, Amalraj Traders,
Main Road, Marthandam,
Kanyakumari District. : Petitioner in W.P.[MD].No.2929 of 2015

Vs.

1.The Commercial Tax Officer,
Enforcement [RRS], Mead Street,
Nagercoil.

2.The Assistant Commissioner of Commercial Taxes,
Kuzhithurai, Kanyakumari District.
: Respondents in W.P.[MD].No.2929 of 2015

C.S.Joshi,
Proprietor, Tvl.Grace Granite Palace,
17-205, Mekkattu Vilai, Padanthalumoodu,
Kanyakumari District. : Petitioner in W.P.[MD].No.2930 of 2015

Vs

1.The Commercial Tax Officer,
Enforcement Group-II, Beach Road,
Thoothukudi.

2.The Assistant Commissioner of Commercial Taxes,
Kuzhithurai, Kanyakumari District.

3.The Deputy Commercial Tax Officer,
Kuzhithurai, Kanyakumari District.
: Respondents in W.P.[MD].No.2930 of 2015

PRAYER IN W.P.[MD].No.2929 of 2015 : Writ Petition is filed under Article 226 of the Constitution of India for the issue of a Writ of Mandamus directing the second respondent to return the cheque No.168323, dated 14.08.2014, and No.168324, dated 14.08.2014, drawn on the Tamil Nadu Mercantile Bank Ltd., Palliyadi, Kanyakumari District, to the petitioner, which had been illegally and without jurisdiction collected by the first respondent from the petitioner, on the date of inspection on 14.08.2014.

PRAYER IN W.P.[MD].No.2930 of 2015 : Writ Petition is filed under Article 226 of the Constitution of India for the issue of a Writ of Mandamus directing the second respondent to return the cheque Nos.12477 and 12478, dated 04.12.2014, drawn on the Tamil Nadu Mercantile Bank Ltd., Palliyadi, Kanyakumari District, to the petitioner, which had been illegally and without jurisdiction collected by the first respondent from the petitioner, on the date of inspection on 04.12.2014.

For Petitioners : Mr.M.Azeem

For Respondents : Mr.A.Muthukaruppan
Additional Government Pleader
takes notice

O R D E R
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Mr.A.Muthukaruppan, learned Additional Government Pleader, takes notice for the respondents. By consent, the Writ Petitions are taken up for disposal at the stage of admission itself.

2. The issue involved in these Writ Petitions has already been decided by this Court in **W.P.[MD].No.723 of 2015**, dated **12.02.2015,** wherein this Court, on a careful consideration of the earlier Judgment of this Court, held as follows:-

> "4. Heard the learned counsel appearing on either side and perused the materials available on record.
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> 5. The fact remains, according to the petitioner, even if there is a violation, before an assessment order, there cannot be a collection of tax amount at the time of inspection, which is fortified by this Court in the judgment reported in *(1992 (87) STC 543)* (cited supra) followed by this Court in an unreported judgment in M/s.Arun Engineering Industries Vs. The Commercial Tax Officer (Enf), for the proposition that without assessment order or without giving an opportunity of personal hearing, there cannot be collection of tax, at the time of inspection.
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> 6. In view of the settled principles of law, the petitioner's legal right has to be safeguarded, but, at the same time, liberty should be given to the Department to take action in accordance with law. Accordingly, the writ petition is disposed of with a direction to the respondents to return the cheques in question to the petitioner within a period of four weeks from the date of receipt of a copy of this order.
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> 7. At this juncture, it is now represented by the petitioner that the bank account of the petitioner has been frozen and it is only a sequence to the earlier inspection. Since it is a settled law that without any assessment order or without any demand, there cannot be a forcible collection of tax, especially, when the petitioner challenged even the issuance of cheques. Therefore, this Court also directs the authorities concerned to de-freeze the account of the petitioner immediately, subject to the condition that the petitioner deposits Rs.35,000/-, within a period of four weeks from the date of receipt of a copy of this order. It is made clear that the petitioner failure to deposit the amount, it is for the authorities to take appropriate action in the manner known to law."

3. In view of the settled position of law, the legal rights of the petitioners have to be safeguarded, but at the same time, liberty has to be given to the authority concerned to take action in accordance with law. Accordingly, the Writ Petitions are disposed of with a direction to

the respondents to return the cheques in question to the petitioners within a period of four weeks from the date of receipt of a copy of this order, subject to the condition that each petitioner shall deposit 10% of the total cheque amount, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

NB
To

1.The Commercial Tax Officer,
Enforcement [RRS], Mead Street,
Nagercoil.

2.The Assistant Commissioner of Commercial Taxes,
Kuzhithurai, Kanyakumari District.

3.The Commercial Tax Officer,
Enforcement Group II, Beach Road,
Thoothukudi.

4.The Assistant Commissioner of Commercial Taxes,
Kuzhithurai, Kanyakumari District.

5.The Deputy Commercial Tax Officer,
Kuzhithurai, Kanyakumari District.

+2cc to MR. M.AZEEM,ADVOCATE IN SR NO.11450 & 11451
+1cc to Special Government Pleader Sr NO. 11836

COMMON ORDER MADE IN
W.P.(MD)Nos.2929 and 2930 of 2015
DATED - 10.03.2015

rg.31.03.2015 3p.9c.