IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.40010 of 2015
and
MP.No.1 of 2015

Kartar Exports
represented by its Proprietrix,
S.Deepa ... Petitioner

Vs

1.The Assistant Commissioner (CT)
Tirupur Central II Circle,
Tirupur.

2.The Commercial Tax Officer (Enforcement)
Group I, Coimbatore ... Respondents

Prayer:- This Writ Petition is filed to issue a Writ of Mandamus to direct the Respondents herein to return Cheque No.091970 dated 26.09.2015 for an amount of Rs.27,10,182/- of the Central Bank of India, Tirupur.

For Petitioner : Mr.N.Inbarajan
For Respondents : Mr.S.Kanmani Annamalai, AGP

O R D E R

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner has filed this Writ Petition, seeking a Mandamus, directing the respondents to return Cheque No.091970 dated 26.09.2015 for an amount of Rs.27,10,182/- of Central Bank of India, Tirupur.

3. According to the petitioner, they are the manufacturers of Hosiery garments and a registered dealer on the file of the first respondent. On 26.09.2015, the second Respondent conducted a surprise inspection in the business premises of the Petitioner, during the course of which, the officials obtained a statement from one Sanjay Chabria, who is in-charge of the premises and forcibly collected three cheques dated 26.09.2015 bearing Nos.091968, 091969 and 091970 towards tax due on the alleged excess stock, equal addition made on the alleged excess

stock and penalty at 150%. Thereafter, the cheques were presented for collection and out of three, two were honoured and one cheque relating to penalty amount was dishonoured for want of sufficient funds. Hence, the first respondent issued a demand dated 26.11.2015 calling the petitioner to pay the penalty amount, interest and compounding fees for the dishonour of the cheque. Aggrieved against the same, the petitioner is before this Court.

4. The learned counsel for the Petitioner contended that the second respondent has no jurisdiction to collect any payment towards tax or penalty in advance without even any order of assessment or demand thereof by the first respondent. Further, the learned counsel for the petitioner contended that when the second respondent is not the assessing authority, the collection of cheques towards tax due, equal addition made on the alleged excess stock and penalty, without the assessment order or demand, is illegal. It is also submitted by the learned counsel for the petitioner that since two cheques were honoured and the amounts have also been debited from the account, the petitioner is entitled for return of the dishonoured cheque.

5. The learned Additional Government Pleader for the Respondents, on instructions, fairly submitted that without making an order of assessment or demand, the second respondent collected three cheques, out of which, two were honoured and one cheque was dishonoured, for which, a demand notice was also issued to the petitioner.

6. I have considered the submissions made on either side and perused the materials available on record.

7. The issue involved in this Writ Petition is squarely covered by various orders of this Court, viz. (i) order dated 5.11.1993 in WP.No.16700 of 2003, (ii) order dated 9.4.2009 in WP.4034 of 2009, (iii) order dated 10.9.2009 in WP.29341 of 2005 and (iv) 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, three cheques have been collected by the second respondent Officials, for the alleged tax due, equal addition made on the alleged excess stock and penalty at 150%, without following the formalities prescribed under law and even without making an order of assessment or demand by the first respondent, after affording due opportunity to the Petitioner. Further, those three cheques were presented for collection, out of which, two were honoured and one cheque towards penalty was dishonoured, for which, a demand notice was subsequently issued to the petitioner.

9. In my considered opinion, the second respondent has no jurisdiction, at the time of inspection, to demand or collect cheque towards tax due or penalty 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 second respondent Officials in collecting the cheques towards alleged tax due, equal addition made on the alleged excess stock and penalty, without an order of assessment or demand is illegal and accordingly, all the collected cheques have to be necessarily returned to the petitioner. However, since two cheques were already honoured, a direction is issued to the respondents to return the dishonoured cheque only.

10. In view of the above said reasons and following the earlier orders of this court as stated above, the respondents are directed to return the cheque No.091970 dated 26.09.2015 of Central Bank of India, Tirupur to the Petitioner, within a period of two weeks from the date of receipt of a copy of this order. 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 respondents 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 direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

rk

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To:

1.The Assistant Commissioner (CT)
Tirupur Central II Circle,
Tirupur.

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

+ 1 cc to Mr.N.Inbarajan, Advocate SR 4542

lrs(co)
prk26/2 WP.No.40010 of 2015