IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.2228 of 2016

M/s.Sri Lakshman Trading Company
represented by its Partner,
P.Subburaman ... Petitioner

Vs

1.The Assistant Commissioner (CT)
Avinashi Road Circle,
Coimbatore 641 018,
Coimbatore District.

2.The Commercial Tax Officer (Enforcement)
Roving Squad-1, Coimbatore,
Coimbatore District. ... Respondents

Prayer:- This Writ Petition is filed to issue a Writ of Mandamus to direct the first respondent to return an amount of Rs.1,04,32,373/- forcibly collected vide Cheques bearing Nos.000374 dated 21.01.2016 for Rs.10,00,000/-, 000375 dated 29.01.2016 for Rs.10,00,000/-, 000376 dated 12.02.2016 for Rs.10,00,000/-, 000379 dated 26.02.2016 for Rs.10,00,000/-, 000380 dated 10.03.2016 for Rs.10,00,000/-, 000381 dated 22.03.2016 for Rs.10,00,000/-000377 dated 12.02.2016 for Rs.10,00,000/-, 000382 dated 03.04.2016 for Rs.10,00,000/-, 000384 dated 17.04.2016 for Rs.10,00,000/- and 000386 dated 30.04.2016 for Rs.14,32,373/- favouring first respondent from the petitioner at the time of inspection on 11.1.2016 by the officials of the second respondent as per the representation dated 12.1.2016.

For Petitioner : Mrs.R.Hemalatha

For Respondents : Mr.V.Haribabu, 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 first respondent to refund an amount of Rs.1,04,32,373/- forcibly collected vide Cheques bearing Nos.000374 dated 21.01.2016 for Rs.10,00,000/-, 000375 dated 29.01.2016 for Rs.10,00,000/-, 000376 dated 12.02.2016 for Rs.10,00,000/-, 000379 dated 26.02.2016 for Rs.10,00,000/-, 000380 dated 10.03.2016 for Rs.10,00,000/-, 000381 dated 22.03.2016 for Rs.10,00,000/-, 000377 dated 12.02.2016 for Rs.10,00,000/-, 000382 dated 03.04.2016 for Rs.10,00,000/-, 000384 dated 17.04.2016 for Rs.10,00,000/- and 000386 dated 30.04.2016 for Rs.14,32,373/- in favour of the first respondent at the time of inspection on 11.1.2016 by the officials of the second respondent, as per the representation made by the petitioner dated 12.1.2016.

3. According to the petitioner, they are the dealer in Old Machinery, Ferrous and Non-Ferrous Scraps and an assessee on the file of the first respondent. On 11.01.2016, the second Respondent along with his officials made a surprise inspection in the business premises of the Petitioner and conducted an audit in terms of Section 65 of the Tamil Nadu Value Added Tax Act, 2006, during the course of which, the officials found out certain defects in respect of the assessment years 2013-14, 2014-15 and 2015-16 (upto November 2015) and forcibly collected the tax amount of Rs.1,04,32,373/- by way of ten cheques, the details of which are as follows:

Cheque No. & Date	Amount
000374 / 21.01.2016	Rs.10,00,000/-
000375 / 29.01.2016	Rs.10,00,000/-
000376 / 12.02.2016	Rs.10,10,000/-
000379 / 26.02.2016	Rs.10,00,000/-
000380 / 10.03.2016	Rs.10,00,000/-
000381 / 22.03.2016	Rs.10,00,000/-
000377 / 12.02.2016	Rs.10,00,000/-
000382 / 03.04.2016	Rs.10,00,000/-
000384 / 17.04.2016	Rs.10,00,000/-
000386 / 30.04.2016	Rs.14,32,373/-
Total	Rs.1,04,32,373/-

Thereafter, the petitioner made a representation dated 12.01.2016 to the first respondent, requesting to refund the said amount and the same was not considered so far. Hence, 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 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 tax by way of cheques in advance without the assessment order or demand, is illegal and hence, prayed for return of the cheques in question.

5. The learned Additional Government Pleader for the Respondents, on instructions, fairly submitted that without making an order of assessment or demand, the cheques in question were collected from the petitioner. However, the same are not cleared so far. He further submitted that there is no question of refund, as wrongly claimed by the petitioner in their representation dated 12.1.2016.

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, ten cheques have been collected by the second 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 first respondent, after affording due opportunity to the Petitioner.

9. In my considered opinion, the second respondent has no jurisdiction, at the time of inspection, to demand or collect cheques 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 second respondent Officials in collecting the cheques towards alleged tax due, without an order of assessment or demand is illegal and accordingly, a direction has to be necessarily issued to the first respondent to return the cheques in question.

10. In view of the above said reasons and following

the earlier orders of this court as stated above, the first respondent is directed to return the cheques bearing Nos.000374 dated 21.01.2016 for Rs.10,00,000/-, 000375 dated 29.01.2016 for Rs.10,00,000/-, 000376 dated 12.02.2016 for Rs.10,00,000/-, 000379 dated 26.02.2016 for Rs.10,00,000/-, 000380 dated 10.03.2016 for Rs.10,00,000/-, 000381 dated 22.03.2016 for Rs.10,00,000/-000377 dated 12.02.2016 for Rs.10,00,000/-, 000382 dated 03.04.2016 for Rs.10,00,000/-, 000384 dated 17.04.2016 for Rs.10,00,000/- and 000386 dated 30.04.2016 for Rs.14,32,373/- 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 cheques 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.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

1.The Assistant Commissioner (CT)
Avinashi Road Circle,
Coimbatore 641 018,
Coimbatore District.

2.The Commercial Tax Officer (Enforcement)
Roving Squad-1, Coimbatore,
Coimbatore District.

+1cc to Mr.R. Hemalatha, Advocate, S.R.No.4953
+1cc to the Government Pleader, S.R.No.4579

SVI(CO)
EU(23/02/2016)

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