IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2016

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.276 of 2016 and
W.M.P.No.162 of 2016

M/s.Shri Vinayaka Fashions,
rep by its Proprietor Vivek Sultania
4A & 4B, LIC Colony 1 Street,
College Road, Tirupppur - 641 601. ... Petitioner

Vs.

1.The Joint Commissioner (CT) Enforcement,
Dr.Balasundram Road, Coimbatore.

2.The Commercial Tax Officer,
Enforcement Group - 1,
Coimbatore.

3.The Assistant Commissioner (CT),
Tiruppur North Circle, Tirupur. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus to direct the 2nd respondent to return the cheque Nos.223236, 223237, 223238 & 223239 dated 26.11.2015 collected in favour of the 3rd respondent at the time of inspection on 26.11.2015 as the collection of such tax and penalty is illegal and contrary to law.

For Petitioner : Ms.C.Rekha Kumari
For Respondents : Mr.Manoharan Sundaram,
Additional Government Pleader (Tax)

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of mandamus to direct the 2nd respondent to return the cheque Nos.223236, 223237, 223238 & 223239 dated 26.11.2015 drawn in favour of the 3rd respondent at the time of inspection on 26.11.2015 as the collection of such tax and penalty is illegal and contrary to law.

2.It is the case of the petitioner that the 2nd respondent had collected the cheques even without any assessment order and based on best judgment amount as well as penalty at the time of inspection on 26.11.2015. The 2nd respondent had exceeded the power entrusted to him under the Act as a quasi-judicial authority by stepping into the shoes of the Assessing Officer by making best judgment assessment at the time of inspection.

3.Mr.Manoharan Sundaram, learned Additional Government Pleader (Tax) appearing for the respondents fairly submitted that in the absence of any assessment order, the 2nd respondent cannot collect the cheques from the petitioner.

4.Having regard to the submissions made by the learned counsel on either side, since the 2nd respondent had received the cheques even without assessment order, the cheques received by him are liable to be returned to the petitioner. Accordingly, the 2nd respondent is directed to return the Cheque Nos.223236, 223237, 223238 & 223239 dated 26.11.2015 drawn in favour of the 3rd respondent to the petitioner within a period of one week from the date of receipt of a copy of this order.

5.With this observation, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Joint Commissioner (CT) Enforcement,
Dr.Balasundram Road, Coimbatore.

2.The Commercial Tax Officer,
Enforcement Group - 1,
Coimbatore.

3.The Assistant Commissioner (CT),
Tiruppur North Circle, Tirupur.

+1 cc to Ms.C.Rekha Kumari Advocate sr.7399

+1 cc to the Special Government Pleader (Taxes) sr.7473

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