IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2016

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.2808 of 2016

and

WMP No.2347 of 2016

M/s.Arumugasamy Alloy Metal Suppliers,
Rep. by its Authorized Signatory,
No.32, Balaji Industrial Estate,
Kondayampalayam Road,
Keeranatham,
Coimbatore - 641 035. ... Petitioner

Vs

The Commercial Tax Officer (Enforcement),
Office of the Joint Commissioner (Enforcement),
Coimbatore District. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of mandamus to direct the respondent to refund the Taxes collected by the Enforcement Wing Officials at the time of inspection of the business place on 06.01.2016 as the taxes collected are without issuance of any demand notice and without jurisdiction and by violating the principles of natural justice.

For Petitioner : Mr.C.Baktha Siromoni
For Respondent : Mr.V.Haribabu,
Additional Government Pleader

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 respondent to return the cheques forcibly collected at the time of inspection on 06.01.2016 by the Enforcement Wing Officials.

3. According to the petitioner, they are dealing with M.S.Scraps Sheet Cuttings and Alluminium Scraps and a registered dealer on the file of the respondent. While so, on 06.01.2016, the Enforcement Wing Officials inspected the business premises of the Petitioner, during the course of which, the officials have taken stock of goods available therein and forcibly collected the tax amount of Rs.10,01,988/- by way of three cheques, each for Rs.3,50,000/-, Rs.3,50,000/- and Rs.3,01,988/- on the ground of alleged stock difference, without any demand notice and without any authority of law. Hence, the petitioner is before this Court.

4. The learned counsel for the Petitioner contended that the respondent has no jurisdiction to collect any payment towards tax without even any order of assessment or demand. Further, the learned counsel for the petitioner contended that such act of the respondent in collecting the 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.

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 Enforcement Wing Officials, for the alleged tax due, without following the formalities prescribed under law and even without making an order of assessment or demand, after affording due opportunity to the Petitioner.

9. In my considered opinion, the 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 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 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 respondent is directed to return the cheques for Rs.3,50,000/-, Rs.3,50,000/- and Rs.3,01,988/- 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. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Commercial Tax Officer (Enforcement),
Office of the Joint Commissioner (Enforcement),
Coimbatore District.

+1 cc to Mr.C.Baktha Siromoni Advocate sr.4804
+1 cc to Special Government Pleader sr.4951

W.P.No.2808 of 2016

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