IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.31466 of 2016

M Sellammal Spinners (P) Ltd.,
Represented by its Director,
S.Nalli Anand Kumar,
232/B, Kovai Main Road,
Annur, Coimbatore District. ... Petitioner

Versus

1. The Assistant Commissioner (CT),
Avinashi Assessment Circle,
Avinashi.

2. The Commercial Tax Officer,
Aliyar Roving Squad,
Pollachi. ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the first respondent to return the cheques bearing Nos.416917, 416930, 416944 for a sum of Rs.9,04,117/- collected at the time of inspection for Assessment years 2014-15 to 2016-17.

For Petitioner : Mr.S.Raveekumar

For Respondents : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.S.Raveekumar, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate, accepting notice on behalf of respondents. With the consent of the learned counsel on either side, the Writ Petition itself is taken up for disposal.

2. The petitioner seeks for a direction upon the first respondent to return the cheques bearing Nos.416917, 416930, 416944 for a sum of Rs.9,04,117/- collected at the time of inspection in the place of business of the petitioner.

3. The validity of the such action has been decided by this Court in several decisions, the earliest of them being in the case of A.Appathurai Nadar and another Vs. Government of Madras and others reported in 17 STC 305, wherein, it was held that there is no provision under the Madras General Sales Tax Act or Rules framed thereunder which enables the Department to receive any advance payment towards tax pending completion of the final assessment. This aspect was reiterated in the case of Hotel Blue Nile Vs. State of Tamil Nadu reported in 87 STC 513, wherein, it was held that spot collection of tax at the time of inspection is impermissible.

4. That apart, the action of the Enforcement Wing Officials in collecting tax during the course of inspection is contrary to the instruction given by the Commissioner in Circular No.7/2014, dated 03.02.2014. Therefore, the collection of tax is per se illegal and the Authorities have got no jurisdiction to retain the same.

5. Accordingly, the Writ Petition is disposed of by directing the first respondent to return the three cheques bearing Nos.416917, 416930, 416944 within a period of two weeks from the date of receipt of a copy of this order and the Assessing Officer is at liberty to issue notice to the petitioner and proceed with the Assessment Proceedings. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

r n s

To

1. The Assistant Commissioner (CC) FAC,
   Avinashi Assessment Circle,
   Avinashi,
   Coimbatore District.

2. The Commercial Tax Officer,
   Aliyar Roving Squad,
   Pollachi.

+1cc to Mr.S.Ravee Kumar, Advocate, S.R.No.51420
+1cc to the Special Government Pleader(T), S.R.No.51528

W.P.No.31466 of 2016

NR(CO)
CA(29/09/2016)