IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 09.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.31482 of 2016

SELECT GALVA INDIA PVT. LTD.,
Rep. by its Director,
New No.14, Sembudoss Street,
Chennai-600 001. .. Petitioner

Versus

1.The Commercial Tax Officer,
Group-II, Enforcement North,
CT Building, Greams Road,
Chennai-600 006.

2.The Assistant Commissioner (CT),
Broadway Assessment Circle,
Chennai-600 001. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, to direct the second respondent to adjust the amount of Rs.53,27,015/- collected during the course of inspection without authority of law, towards the regular tax dues accruing from the ensuring months onwards as claimed by the petitioner in his representation letter dated 12.08.2016, within a time frame.

For Petitioner : Mr.MD.Ghafoor Ur Rahman

For Respondents : Mr.K.Venkatesh
Government Advocate (Tax)

O R D E R

Heard Mr.MD.Ghafoor Ur Rahman, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate (Tax), 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 who is a registered dealer on the file of the second respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'the TNVAT Act"), has filed this Writ Petition praying for a direction to consider

his representation, dated 12.08.2016 and to adjust the amount of Rs.53,27,015/- collected form the petitioner by way of cheques by the first respondent during the course of inspection conducted in the place of business of the petitioner.

3. The action of the first respondent in collecting the tax at the time of inspection as if it is towards a payment of advanced tax is illegal and such practice has been deprecated by this Court in the case of Hotel Blue Nile Vs. State of Tamil Nadu reported in 87 STC 513 and in the case of K.Packiriswamy Vs. Deputy Commercial Tax Officer (Enforcement I), Tiruvarur and others reported in (2006) 147 STC 368 (Madras).

4. In the instant case, the cheques collected from the petitioner by the first respondent has been handed over to the second respondent, who is the petitioner's Assessing Officer and he has encashed the cheques and the money is now in the hands of the second respondent. It is not known under which head of account, the second respondent has retained the money recovered from the dealer, since it is an admitted fact as on date, the Assessment Proceedings have not been initiated.

5. Therefore, this Court is of the prima-facie view that when the collection of such cheques by the Inspection Officer itself is held to be illegal in several decisions and the retention of money by the second respondent is also illegal. Therefore, necessarily, the second respondent has to adjust the amount as against the regular Assessments of the petitioner, otherwise, it would amount to an illegality.

6. In the light of the above, the second respondent is directed to consider the petitioner's representation dated 12.08.2016 and adjust the amount recovered from the petitioner as against the regular tax dues of the petitioner, based upon the monthly returns filed by the petitioner.

7. With the above direction, the Writ Petition is disposed of. No costs .

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

r n s

To

1.The Commercial Tax Officer,
Group-II, Enforcement North,
CT Building, Greams Road,
Chennai-600 006.

2.The Assistant Commissioner (CT),
Broadway Assessment Circle,
Chennai-600 001.

1 cc to The Special Government Pleader(Taxes), sr.51527

W.P.No.31482 of 2016

gj ii co
kra 29.09.2016