IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.09.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.No.33271 of 2016

& WMP Nos.28745, 22846/2016

M/s.Aravind Traders,
Rep.by its Proprietor K.Murugan,
S.F.No.236/2, Chellandiamman Nagar,
Singanallur,
Coimbatore-641 005.
Coimbatore District. ..Petitioner

Vs

1. Assistant Commissioner (CT)
   Singanallur Circle,
   Coimbatore,
   Coimbatore District.

2. Commercial Tax Officere (Enforcement)
   CEW-I, Coimbatore,
   Coimbatore District. .. Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate Writ, order or direction in the nature of a Writ, calling for the records on the file of the 1st respondent in its impugned proceedings made in TIN: 33881824420 dated 22.04.2016 quash the same and further direct the 1st respondent to return the forcibly cllected cheque bearing 646003/31.03.2016 to Rs.57,46,021/- and 646004/18.04.2016 for Rs.57,46,021/- drawn on Yes Bank, Avinasi Road, Coimbatore from the petitioner at the time of inspection on 01.02.2016 to 25.02.2016 by the officials of the 2nd respondent .

For Petitioner : Mrs.R. Hemalatha
For Respondents : Mr.K.Venkatesh
Government Advocate (T)

ORDER

Heard Mrs.R.Hemalatha, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate (T) accepting notice for the respondents and with the consent on either side, the writ petition is taken up for final disposal.

2 The petitioner is a registered dealer on the file of the 1st respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and has challenged the demand notice issued by the 1st respondent / Assessing Officer of the petitioner, calling upon the petitioner to pay certain amount on account of the fact that two cheques issued by the petitioner have been dishonoured by the Bank. The cheques were not submitted by the petitioner towards remittance of tax to the Assessing Officer ; but has been collected by the 2nd respondent, the Enforcement Officer when the place of business was inspected on 01.02.2016.

3 In several decisions of this Court, it has been pointed out that the Enforcement Wing Officials are not justified in collecting cheques from the dealers as if it is an advance tax and in spite of this practice having been frowned upon in several decisions, the practice appears to be adopted unabatedly by the Enforcement Wing officials of Commercial Taxes Department. Thus, these cheques which have been dishonoured by the petitioner's Bankers, having been collected by the Enforcement Wing Officials during inspection, a demand based on the said cheques cannot be raised by the 1st respondent. Needless to state that the 1st respondent is entitled to proceed to make the assessment on the petitioner if there are valuable material available that the transactions have been suppressed or the petitioner has not filed true and correct returns.

4 Accordingly, the writ petition is allowed and the impugned proceedings made in TIN: 33881824420 dated 22.04.2016 by the 1st respondent is set aside and the respondents are directed to return the two cheques within a period of two weeks from the date of receipt of a copy of this order to the petitioner and thereafter, the 1st respondent shall proceed in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

AP

To

1. Assistant Commissioner (CT)
   Singanallur Circle,
   Coimbatore,
   Coimbatore District.

2. Commercial Tax Officer (Enforcement)
   CEW-I, Coimbatore,
   Coimbatore District.

+1 CC to M/s. R. Hemalatha, Advocate Sr.NO.53820

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AK (CO)
MD : 17/10/2016