IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.36402 of 2016

Tvl.Aathi Velan Mills
rep. by its Sole Proprietor
Mr.P.Gopalasamy .. Petitioner

-Vs-

1.The Assistant Commissioner (CT)
Central II Assessment Circle
Commercial Taxes Buidings
Kumaran Street,
Tirupur 641 601.

2.The Commercial Tax Officer (Enforcement)
Group-IV,
Commercial Taxes Buildings
Dr.Balasundaram Road
Coimbatore. .. Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to return the post dated cheques pending as on date for presentation in the banks and available in the hands of the respondent for Rs.30,01,726/- and to order refund the cheques encashed by the respondent in the meantime of Rs.15,00,000/- out of the total illegally collected amount of Rs.45,01,726/-, to the petitioner.

For Petitioner : Mr.S.Sivakumar

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.S.Sivakumar, learned Counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate, who has accepted notice on behalf of the respondent. With the consent of the learned counsel appearing on either side, the Writ Petition itself is taken up for disposal.

2.In this Writ Petition, the petitioner seeks for a direction upon the respondents to return the post dated cheques which are taken from the petitioner during the course of inspections.

3.Time and again, this Court has held that the collection of post dated cheques or collecting the cheques during the course of inspection, as if they were collected as advance cheques, cannot be made. On such decision being in the case of Hotel Blue Nile Vs. State of Tamil Nadu (Mad.), [(1992) 87 STC 513 (Mad)], wherein it has been held as follows:

> "6...........Even assuming that the petitioner had not filed his returns in time, though his taxable turnover exceeded the minimum level, such a spot collection of compounding fee and tax has to be condemned and the department cannot resort to such practice, even though there is any violation of the provisions of the Act. It is not as if the petitioner alone is avoiding to pay tax and there are many number of assesses still, who are not filing their returns in time, even though their turnover exceeds the minimum, making them liable to pay tax. In all such matters, the authorities are expected to follow the procedure contemplated under the Act and the Rules framed thereunder."

By applying the decision to the facts of the present case, it is held that the action of the respondents in collecting cheques from the petitioner is unsustainable.

4.Accordingly, the Writ Petition is allowed and the respondents are directed to return all the cheques which were collected from the petitioner, within a period of one week from the date of receipt of a coy of this order. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1.The Assistant Commissioner (CT)
Central II Assessment Circle
Commercial Taxes Buidings
Kumaran Street,
Tirupur 641 601.

2.The Commercial Tax Officer (Enforcement)
Group-IV,
Commercial Taxes Buildings
Dr.Balasundaram Road
Coimbatore.

+1 CC to Mr. S. Sivakumar, Advocate Sr.No.59505
+1 CC to Spl. Government Pleader (Taxes) Sr.NO.59575

W.P.No. 36402 of 2016

SV (CO)
MD : 21/10/2016