IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.11.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.No.38393 of 2016

Tvl.Annapoorani Yarns
Rep. By its Partner R.Jayachandran ...Petitioner

Vs.

1.The Joint Commissioner (CT) (Enforcement)
C.T.Building, Dr.Balasundaram Road
Coimbatore 641 018.

2.The Assistant Commissioner (CT)
Tirupur Lakshmi Nagar Assessment Circle
Kumaran Road,
Tirupur 641 602.
.. Respondents

Prayer :

This Writ Petition is filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Mandamus, directing the first respondent to arrange to return back the cheque Nos.000458 dated 20.10.2016 for Rs.12,50,000/-; 000459 dated 20.11.2016 for Rs.12,50,000/-; 000460 dated 20.12.2016 for Rs.14,03,456/- and 000462 dated 20.01.2016 for Rs.12,50,000/-, totalling to Rs.51,53,456/- issued on Karur Vysya Bank, P.N.Road, Tirupur collected on the spot on 01.09.2016, as being contrary to the principle laid down by this Court in the Judgment reported in (1992) 87 STC 513 (Hotel Blue Nile V. State of Tamil Nadu & others).

For Petitioner :Mr.R.Senniappan

For Respondents :Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.R.Senniappan, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents. With the consent of the learned counsel appearing on either side, the Writ Petition is taken up for disposal.

2.The petitioner is a registered dealer on the file of the second respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006, [TNVAT Act] and in this Writ Petition, the petitioner seeks for a direction upon the respondents to return the cheques, which were taken by the first respondent during the course of inspection conducted by them.

3.The law on the issue has been settled by this Court in several decisions and the first of being in the case of HOTEL BLUE NILE v. STATE OF TAMIL NADU AND OTHERS [(1992) 87 STC 513], wherein it has been held that it was not open to the authorities to bypass the procedure prescribed under the Act, and the collection of compounding fee and tax were without authority of law, and liable to be refunded. Furthermore, it was held that the Inspecting Authorities are not entitled to collect cheques from the dealer, as if it is an advance tax. This view has been consistently followed by this Court in several decisions. Therefore, the action of the respondents in collecting cheques from the petitioner at the time of inspection is held to be without jurisdiction.

4. Accordingly, the respondents are directed to return the cheques which have been collected from the petitioner on 01.09.2016, within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Joint Commissioner (CT) (Enforcement)
C.T.Building, Dr.Balasundaram Road
Coimbatore 641 018.

2.The Assistant Commissioner (CT)
Tirupur Lakshmi Nagar Assessment Circle
Kumaran Road,
Tirupur 641 602.

+1cc to Mr.R. Senniappan Advocate, S.R.No.62704
+1cc to the Government Pleader, S.R.No.63121

msm (CO)
md (7/11/2016)

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