IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.11.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.No.39004/2016

M/s.Cauvery Enterprises
rep.by Proprietor S.Suresh, No.10,
Sun Complex, Ground Floor,
Pachaiyappan School Street
Chidambaram. .. Petitioner

Vs

1.The Commercial Tax Officer
[Enforcement], [Group-3]
Cuddalore.

2.The Commercial Tax Officer
Chidambaram-II Assessment Circle
Chidambaram. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 1st respondent to return the cheques Nos.67451, 67448, 67449, 67450 all dated 16.08.2016 collected by him pursuant to the surprise inspection dated 16.08.2016 based on the Web Report and alleged stock difference without any order of assessment passed by the 2nd respondent being an Assessing Officer under section 2 [5] of the Tamil Nadu Value Added Tax Act, 2006 following the procedure and law laid down by this Court for the purpose of assessment under the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.V.Sundareswaran
For R1&R2 : Mr.K.Venkatesh, GA

ORDER

Heard Mr.V.Sundareswaran, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing on behalf of the respondents and with the consent on either side, the writ petition is taken up for final disposal.

2 The petitioner is a dealer in Consumer Durables and registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, [TNVAT Act]. In this writ petition, the petitioner seeks for the return of the cheques collected from the petitioner by the 1st respondent

during the course of surprise inspection conducted on 16.08.2016 in the business premises of the petitioner.

3 The settled legal position is that the officers of the Enforcement Wing of the Commercial Tax Department, while conducting inspection in the premises of the dealer, are not expected to collect cheques from the dealer as if towards payment of advance tax. The earliest decision on this point is in the case of Hotel Blue Nile Vs. State of Tamilnadu and others reported in [1992] 87 STC 513. This view has been consistently followed by this Court in several decisions including in the case of Muragents Vs. Commercial Tax Officer, Mannargudi and others reported in 61 VST 35. Therefore, it has to be necessarily held that the action of the 1st respondent in collecting cheques from the petitioner is without jurisdiction.

4 Accordingly, the respondents are directed to return the cheques bearing Nos.67451, 67448, 67449, 67450 collected from the petitioner on 16.08.2016 within a period of one week from the date of receipt of a copy of this order. It is made clear that till the cheques are returned to the petitioner, they shall not be presented for encashment by the respondents.

5 The writ petition stands disposed of with the above direction. No costs.

Sd/-
Asst.Registrar (CS V )

/true copy/

Sub Asst. Registrar

To

1.The Commercial Tax Officer
[Enforcement], [Group-3]
Cuddalore.

2.The Commercial Tax Officer
Chidambaram-II Assessment Circle
Chidambaram.

+1 cc to Mr.V.Sundareswaran, advocate,sr.64319

+1 cc to Spl.Government Pleader,sr.64330

vsn(co)
krd 14/11

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