IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2016

CORAM:

THE HON'BLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.39509 of 2016

Tvl.Landmark Shops India Pvt Ltd,
Represented by its Manager-cum-Accountant,
D.Tamil Arasu,
616 Anna Salai, Chennai 600 006 ... Petitioner

Vs

1. The Commercial Tax Officer
Enforcement (Central) Group-II Greams Road
Chennai-600006.
2. The Assistant Commissioner
(CT) Nungambakkam Assessment Circle
Spurtank Road Chennai-600 031 ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to arrange to return back the cheque No.421513 dated 05.11.2016 for Rs.15,37,722/- issued on State Bank of Travancore Teynampet Branch Collected on the spot on 05.11.2016 as being contrary to the principle laid down by this Court in the Judgment reported in (1992) 87 STC 513 (Hotel Blue Nile- vs- state of Tamil Nadu & Others).

For Petitioner : Mr. R.Senniappan
For Respondent : Mr. S.Kanmani Annamalai, Spl.G.P.,

O R D E R

Heard the learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Special Government Pleader (Taxes), who accepts notice on behalf of the respondents. By consent of the learned counsel for both sides, the writ petition is taken up for final disposal at the admission stage itself.

2. In this writ petition, the petitioner questions the authority of the respondents to impose spot collection of tax without following the procedure contemplated under law.

3. The learned counsel for the petitioner would contend that the petitioner-company is a registered dealer in

buying and selling of consumable durables such as Television, Fridge, Washing Machine, Fan, etc., and they are also submitting their monthly returns to the second respondent periodically. While so, on 01.11.2016, 03.11.2016 and 04.11.2016, the first respondent conducted inspection on the premises of the petitioner and during the course of such inspection, obtained statement from the petitioner under coercion. The first respondent also collected a cheque from the petitioner for a sum of Rs.15,37,722/- towards tax. According to the learned counsel for the petitioner, the recovery of tax amount by the respondents, without following any of the procedures contemplated under law, is arbitrary and illegal and therefore, he prayed for issuing a Mandamus to the respondents to refund the tax amount to the petitioner.

4. The learned Special Government Pleader appearing for the respondents fairly submitted that spot collection of the tax amount is not proper. However, the learned Special Government Pleader would contend that the cheque if any or the tax amount, if any, collected from the petitioner will be returned and such return of the tax amount will be without prejudice to the right of the respondents to initiate appropriate assessment proceedings against the petitioner in accordance with law.

5. Having regard to the submissions made by the learned counsel for both sides, this Court is of the view that collecting the tax amount on the spot, without adhering to any of the provisions contemplated under the Tamil Nadu Value Added Tax Act, 2006, or other enactment, is illegal and against the principles of natural justice. In this case, inasmuch as the tax amount was collected from the petitioner on the spot and from his place of business, the respondents are directed to return the cheque amount of Rs.15,37,722/- collected from the petitioner, by means of cheque(s), forthwith. It is made clear that such refund of tax amount cheque is without prejudice to the right of the respondents to initiate appropriate assessment proceedings against the petitioner in a manner known to law. Accordingly, the writ petition is disposed of. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Commercial Tax Officer
Enforcement (Central) Group-II Greams Road
Chennai-600006.

2. The Assistant Commissioner
(CT) Nungambakkam Assessment Circle
Spurtank Road Chennai-600 031

+1 cc to Spl.Govt.Pleader,sr.65175

+1 cc to Mr.R.Senniappan,advocate,sr.65081.

nrjk(co)

krd 14/11