In the High Court of Judicature at Madras

Dated : 23.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.41118 of 2016

K.Ayyasamy, Proprietor,
Murugan Garments, Tirupur-7. ...Petitioner

Vs

1.The Joint Commissioner (CT)
Enforcement, CT Building,
Coimbatore-18.

2.The Assistant Commissioner (CT),
Kongu Nagar Assessment Circle,
Tirupur.

3.The Commercial Tax Officer
(Enforcement), Group II, CT Building
Dr.Balasundaram Road,
Coimbatore-18. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to (1) return to the petitioner the 5 cheques (a) Cheque No.879337 dated 01.10.2016 for Rs.8,50,000/- (b) Cheque No.879338 dated 02.11.2016 for Rs.8,50,000/- (c) Cheque No.879339 dated 01.12.2016 for Rs.8,50,000/- (d) Cheque No. 879344 dated 18.1.2017 for Rs.8,61,210/- and (e) cheque No.879341 dated 02.2.2017 for Rs.8,60,000/-, all drawn on State Bank of India Main Branch P.N.Road, Tirupur and (2) refund to the petitioner the sum of Rs.8,77,872/- realized through Cheque No.879343 dated 20.9.2016 drawn on State Bank of India, Main Branch, P.N.Road, Tirupur.

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For Petitioner : Mr.T.Sai Krishnan for
M/s.Sai, Bharath & Ilan

For Respondents : Mr.K.Venkatesh, GA

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ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner, which is a registered dealer on the file of the second respondent, has filed this writ petition seeking twin reliefs, firstly for return of 5 cheques, which have been taken from the petitioner by the officials of the Enforcement Wing under the control of the first respondent. Secondly, the relief sought for is to refund the amount, which has been realised by the respondents from one of the cheques bearing cheque No.879343 dated 20.9.2016.

3. The issue as to whether the Inspecting Officers are entitled to collect cheques from the assessees came up for consideration before this Court, first of which being in the case of Hotel Blue Nile Vs.State of Tamil Nadu & Others [reported in (1992) 87 STC 513] wherein it has been held that the Inspecting Officers are not entitled to collect cheques from the dealers during the course of inspection as if they are towards advance tax. This view has been consistently followed by this Court and directions were issued for return of cheques. Therefore, so far as the collection of cheques by the officials of the Enforcement Wing is concerned, the cheques need to be returned.

4. Accordingly, there will be a direction to the second respondent to return the five cheques, which have been collected from the petitioner by the officials of the Enforcement Wing.

5. With regard to the refund of the amount, which has been realised by presenting one of the cheques, it is seen that the second respondent - Assessing Officer has already issued notices dated 3.11.2016 to the petitioner calling upon them to file their objections to the proposal for the assessment years 2010-11 to 2015-16 and the petitioner received those notices. Therefore, the amount, which has been recovered from the petitioner, shall abide by the final orders of assessment to be passed by the second respondent pursuant to the notices dated 3.11.2016. The petitioner is directed to submit their objections and file documentary proof by responding to the show cause notices dated 3.11.2016.

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6. With the above directions, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

RS

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To

1.The Joint Commissioner (CT) Enforcement, CT Building,
Dr.Balasundaram Road, Coimbatore-18.

2.The Assistant Commissioner (CT), Kongu Nagar Assessment Circle,
Tirupur.

3.The Commercial Tax Officer (Enforcement), Group II,
CT Building, Dr.Balasundaram Road,
Coimbatore-18.

+1cc to M/S.Sai, Bharath & Ilan, Advocate sr.68228
+1cc to the Special Government Pleader Sr.68284

WP.No.41118 of 2016

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srg 14/12/2016

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