IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.12.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.No.42372/2016 & WMP.No.36273/2016

Jayam Garments rep.by its Partner
M.Mohamed Ibrahim, No.37,
Vivekananda Nagar, Sirupuluvapatti
Post, Tirupur 641 603. .. Petitioner

Vs

1.The Assistant Commissioner
[CT], Tirupur Central-II Assessment
Circle, Tirupur.

2.The Commercial Tax Officer
CEW, II. Coimbatore. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents herein to return the four cheques bearing No.79327 dated 23.11.2016 for Rs.8,34,173/-, Cheque No.79328 dated 23.12.2016 for Rs.12,00,000/-; Cheque No.79329 dated 23.01.2017 for Rs.12,00,000/- ; and Cheque No.79330 dated 24.02.2017 for Rs.13,56,027/- drawn on the ICICI Bank, Indra Nagar Branch, Tirupur collected by the respondents herein issued in favour of the 1st respondent herein.

For Petitioner : Mr.N.Inbarajan
For Respondent : Mr.K.Venkatesh, GA

ORDER

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

2 The petitioner is a dealer in manufacturing Hosiery garments out of the cloth and yarn and registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, [TNVAT Act] as well as under the Tamil Nadu General Sales Tax Act [TNGST Act]. In this writ petition, the petitioner seeks for the return of the cheques collected from the petitioner by the respondents during the course of surprise inspection conducted on 17.10.2016 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 respondents in collecting cheques from the petitioner is without jurisdiction.

4 Accordingly, the respondents are directed to return the cheques bearing Nos.79327, 79328, 79329 and 79330 collected from the petitioner on 17.10.2016 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. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To
1.The Assistant Commissioner
[CT], Tirupur Central-II Assessment
Circle, Tirupur.

2.The Commercial Tax Officer
CEW, II, Coimbatore.

+1 cc to M/s.N.Inbarajan,advocate,sr.71200

+1cc to Spl.Govt.Pleader,sr.71514.

mv(co)
krd 7/12

WP.No.42372/2016