BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 02.12.2016
CORAM
THE HONOURABLE DR.JUSTICE S.VIMALA
W.P(MD)No.22618 of 2016
and
W.M.P(MD)No.16187 of 2016

Tvl.Parvathi Traders, rep by
Proprietor P.Rajendran,
9/1/27, Ernagasamuthram,
Eriyodu, Vedasandur Taluk,
Dindigul District-624702. ... Petitioner

vs.

1)The Commercial Tax Officer,
Dindigul (Rural), Dindigul.

2)The Commercial Tax Officer (Enforcement),
Group-III, Madurai-20.

3)The Joint Commissioner of Commercial Taxes,
(Enforcement), Madurai-20.

4)The Commissioner of Commercial Taxes,
Ezilagam, Chepauk, Chennai-5. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in his proceedings in TIN/No.33815265388/2016-17 dated 01.11.2016 and quash the same as illegal, violative of the provisions of the Tamil Nadu Value Added Tax Act, 2006 and against the principles of natural justice and further direct the 1st respondent to return the petitioner's Cheque No.040607 dated 17.09.2016 drawn on Tamilnadu Mercantial Bank Ltd., for a sum of Rs.4,50,000/-.

For Petitioner : Mr.A.Chandrasekaran
For Respondents : Mr.R.Karthikeyan,
Additional Government Pleader

ORDER

This Writ of Certiorarified Mandamus has been filed, calling for the records on the file of the 1st respondent in his proceedings in TIN/No.33815265388/2016-17 dated 01.11.2016 and quash the same as illegal, violative of the provisions of the Tamil Nadu Value Added Tax Act, 2006 and against the principles of natural justice and to further direct the 1st respondent to return the petitioner's Cheque No.040607 dated 17.09.2016 drawn on Tamilnadu Mercantial Bank Ltd., for a sum of Rs.4,50,000/-.

2.By consent, the writ petition itself is taken up for final disposal.

3.Mr.R.Karthikeyan, learned Additional Government Pleader takes notice for the respondents.

4.The petitioner challenges the impugned proceedings, by which, the 1st respondent directed the petitioner to pay a sum of Rs.4,50,000/- along with interest at the rate of 2%. The said amount was given by the petitioner by way of Cheque No.040607 dated 17.09.2016 in favour of the department and when the same was sent for collection, it was returned without realisation.

5.The case of the petitioner is that there is no legally enforceable demand and Cheque No.040607 was forcibly obtained from the petitioner on 17.09.2016, when a surprise inspection was made in the petitioner concern.

6.The learned Additional Government Pleader pointed out that the petitioner himself has given a statement before the authorities, agreeing to pay the said amount and gave the abovesaid cheque. This contention is seriously disputed by the learned counsel for the petitioner.

7.The issue as to whether the cheque in question was obtained by the respondent by coercion or it was given voluntarily by the petitioner is the issue to be considered.

8. The case of the petitioner is that when the respondent inspected his premises, the cheque was obtained from him forcibly and therefore, it should be returned to him. But the case of the respondent is that the cheque was handed over towards payment of TANVAT and therefore, it need not be returned. Circulars have been issued by the office of the respondent, instructing the Officials not to collect cheque at the time of inspection.

8.1. Rule 23 of the Tamil Nadu Value Added Tax Rules 2007 provides for mode payment towards taxes or other amounts due under the Act. Now, it is relevant to extract Rule 23 - Tamil Nadu Value Added Tax Rules 2007 and the same is extracted hereunder:

"Rule 23. Mode of payment - The taxes or other amounts due under the Act shall be paid -

R.23(1)(a) by remittance into State Bank of India or any other bank authorized by the Government from time to time; or

R.23(1)(b) by remittance in cash into a Government Treasury or to the assessing authority or other officer empowered to make the demand or authorised to make the collection; or

R.23(1)(c) by means of a crossed cheque in favour of the assessing authority drawn on any one of the banks situated within the city/town where office of the assessing authority is situated; or

R.23(1)(d) by means of a cross demand draft or a banker's cheque drawn in favour of the assessing authority; or

R.23(1)(dd) by means of electronic payment through the website of the Commercial Taxes Department; and

R.23(1)(e) by any other mode as authorised by the Government from time to time

Provided that the method of payment by means of cheque shall not be applicable to the causal traders and to the dealers whose cheque got dishonoured for want of funds on more than one occasion.

[Provided further that the category of dealers as may be directed by the Commissioner of Commercial Taxes shall make electronic payment of tax through the website of the Commercial Taxes Department.]

[Provided also that every registered dealer liable to pay tax under the Act, whose taxable turnover in the preceding year exceeds two crores of rupees, shall pay the tax only by means of electronic payment through the website of the Commercial Taxes Department.]

8.2. By letter dated 19.09.2016, the petitioner has clearly stated that the cheque was obtained from him forcibly. Further, when the respondent sent a reply stating that it was given towards tax payment, the petitioner has again indicated that the liability itself is not established and it is in dispute and therefore, there is no scope for handing over cheque towards payment of taxes.

8.3. The facts and circumstances and the correspondence between the parties would go to show that the cheque could not been given voluntarily. Unless the liability attains finality through legal process, i.e. except through procedure established by law, the respondents have not right to demand the tax. Therefore, the first respondent is directed to return the petitioner's cheque dated 17.09.2016. However, it is open to the 1st respondent to invoke the provisions of the

TNVAT Act, if there is any amount due and payable by the petitioner.

9. With the above direction, this Writ Petition is disposed of. No costs. Consequently, W.M.P(MD)No.16187 of 2016 is closed.

Sd/-
Assistant Registrar[C]

/True copy/

Sub Assistant Registrar

To
1)The Commercial Tax Officer,
Dindigul (Rural), Dindigul.

2)The Commercial Tax Officer (Enforcement),
Group-III, Madurai-20.

3)The Joint Commissioner of Commercial Taxes,
(Enforcement), Madurai-20.

4)The Commissioner of Commercial Taxes,
Ezilagam, Chepauk, Chennai-5.
+1cc to The Special Government Pleader,
Madurai Bench of Madras High Court,Madurai.(SR.79545)
+1cc to Mr.A.Chandrasekaran,Advocate(SR.79368)
NBI
KK-SKN-RSK-16.02.2017-4P-7C

W.P(MD)No.22618 of 2016
02.12.2016